

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals
For the
District of Columbia Circuit
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FILED

AUG 29 1956

No. 13,453

Joseph W. Stewart
CLERK

ISADORE M. GUDELSKY,
HARRY GUDELSKY,
HOMER GUDELSKY, Et Al.,

Appellants,

v.

SAMUEL SPENCER,
ROBERT E. McLAUGHLIN,
BRIGADIER GENERAL THOMAS A. LANE,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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(i)

No. 13,453

APPELLANTS' STATEMENT
OF QUESTIONS PRESENTED

In a suit by land-owners for a preliminary injunction against the Commissioners of the District of Columbia to restrain the Commissioners from designating the area containing plaintiffs' land as a "project area for urban renewal" until such time as a public hearing could be held as provided by law, did the Court err in granting defendants' motion for summary judgment where there also existed genuine and material issues of fact as to (1) whether or not defendants held a public hearing on January 20, 1956, as provided by statute; (2) whether or not defendants designated the area containing plaintiffs' property as an Urban Renewal Project Area and fixed the boundaries thereof; and (3) whether or not plaintiffs' property is included in the said area and plaintiffs' property rights are being irreparably injured thereby.

(ii)
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UNITED STATES COURT OF APPEALS

For The District Of Columbia Circuit

No. 13,453

ISADORE M. GUDELSKY,
HARRY GUDELSKY,
HOMER GUDELSKY,
JEROME SCHEFFRES,
EUGENE SCHEFFRES,
LILLIAN SCHEFFRES TURNER,

Appellants

v.

SAMUEL SPENCER,
ROBERT E. McLAUGHLIN,
BRIGADIER GENERAL THOMAS A. LANE,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

This is an appeal from an order granting the motion for summary judgment of the defendants, the Board of Commissioners of the District of Columbia (hereinafter referred to as "the Commissioners"). The order of the Court granting the Appellees' motion for summary judgment was entered on April 25, 1956, and this appeal was noted May 18, 1956. Jurisdiction of the District Court is based upon Section 306, Title 11 of the 1951 Edition of the Code of the District of Columbia, and the jurisdiction of this Court is based upon Section 1291, Title 28 of the U.S. Code.

STATEMENT OF THE CASE

On February 16, 1956, appellants, property owners in the District of Columbia, filed a complaint in the District Court, seeking injunctive relief against appellees, the Board of Commissioners of the District of Columbia, asserting various grounds for challenging the manner in which the Commissioners applied the District of Columbia Redevelopment Act of 1945 and the Housing Acts of 1949 and 1954, as amended (J.A. 1).

Specifically, plaintiffs complained of the Commissioners' actions at a Board meeting on January 20, 1956, when, having given no notice or hearing as required by statute, the Commissioners designated the area in which plaintiffs' property is located as "The George Washington University Urban Renewal Project Area," and unanimously approved the area boundaries thereof (J.A. 9).

The minutes of the above meeting recite approval by the Commissioners, after Executive Session, of the "area boundaries of the proposed George Washington University Urban Renewal Area, provided said area boundaries are adopted by the National Capital Planning Commission" (J.A. 12).

The Planning Commission, on February 2-3, 1956, approved a resolution adopting the modified boundaries (J.A. 20).

Following is a description of the revised boundaries of the George Washington University Renewal Project Area, as approved by the Planning Commission and the Commissioners:

"Beginning for the same at a point on the northeasterly line of Pennsylvania Avenue, said point of beginning being the intersection of said northeasterly line of Pennsylvania Avenue with the center line of 24th Street; and running thence Southeasterly along the said northeasterly line of Pennsylvania Avenue to its intersection with the westerly line of Washington Circle (U.S.

Reservation 26); thence along the said westerly, southerly, and easterly lines of Washington Circle to a point where said Circle is intersected by the said northeasterly line of Pennsylvania Avenue; thence in a southeasterly direction along said northeasterly line of Pennsylvania Avenue to its intersection with the east line of 19th Street; thence South along the said east line of 19th Street to the southeasterly line of New York Avenue; thence Southwesterly along the said southeasterly line of New York Avenue to the southwesterly line of Virginia Avenue; thence Northwesterly along the said southwesterly line of Virginia Avenue to the South line of E Street; thence West along the said South line of E Street to the east line of 25th Street; thence South along the said east line of 25th Street to a point where the southeasterly extension of the southwesterly line of Water Street intersects the said east line of 25th Street; thence Northwesterly along the said Southwesterly line of Water Street to the east line of 26th Street; thence South along the said east line of 26th Street to a point where the southeasterly extension of the northeasterly boundary of West Potomac Park (U.S. Reservation 332) intersects said east line of 26th Street; thence in a Northwesterly direction along the said northeasterly line of West Potomac Park to the easterly boundary of Rock Creek and Potomac Parkway (U.S. Reservation 360); thence along said easterly boundary of Rock Creek and Potomac Parkway to the intersection of said easterly boundary of Rock Creek and Potomac Parkway with the center line of F Street; thence East along the said center line of F Street to the center line of 25th Street; thence North along the said center line of 25th Street to the center line of G Street; thence East along said center line of G Street to the center line of 24th Street; thence North along the said center line of 24th Street to the said northeasterly line of Pennsylvania Avenue and the point of beginning. " (J.A. 30)

A complaint was filed in the District Court by the appellants herein on February 16, 1956. The complaint recited, among other matters, plaintiffs' ownership of property within the affected area, and defendants' violation of the express provisions of Title 5 of the District of Columbia Code, Sections 700 to 719, as amended, in that defendants failed to give notice to the plaintiffs and other residents, owners and parties in interest in the area, before designating the aforesaid area as a project area for urban renewal. It further recited the great increase in land transactions within the past three years and corresponding increase in values of the land in that area. The complaint alleged that the value of plaintiffs' land had been irreparably diminished due to the stagnation of the area for private development and improvement and the deterrent effect upon investment and development capital brought on by the designation of the area as an urban renewal project area (J.A. 1-4).

On February 29, 1956, plaintiffs filed a Motion for Preliminary Injunction together with affidavits in support thereof by qualified real estate dealers to enjoin the defendants, pending the final hearing and determination of the cause, from continuing their designating as a "project area for urban renewal" the area heretofore described. Plaintiffs again alleged immediate and irreparable injury, loss and damage (J.A. 5, 6, 24).

On April 10, 1956, a hearing was held in the District Court upon plaintiffs' motion for preliminary injunction and defendants' motion for summary judgment. Upon conclusion of oral argument, the Court granted defendants' motion for summary judgment. Defendants were thereupon requested to prepare Findings of Fact and Conclusions of Law consistent with the Court's finding (J.A. 32).

On April 25, 1956, over plaintiffs' objections, the Court adopted the proposed Findings of Fact and Conclusions of Law, and entered an Order consistent with the Court's findings at the hearing (Letts, J.) (J.A. 33).

The Findings of Fact adopted by the Court included (1) a finding that defendants held a "semi-public hearing" on January 20, 1956; (2) a finding that defendants did not designate the area delineated in their resolution of January 20, 1956, as an Urban Renewal Project Area and did not finally and firmly fix boundaries for such a project area; and (3) that prior to the making of certain surveys and studies, it cannot be determined whether plaintiffs' properties will be included in the area finally decided upon and whether, if so included, any plan which is proposed to operate in such area will affect plaintiffs' properties (J. A. 33).

This appeal was noted on May 18, 1956 (J. A. 40).

STATUTES INVOLVED

Act of August 2, 1946, Title 5, c. 7, Sec. 702 (j), Definition of Project Area.

"Project area" is an area of such extent and location as may be adopted by the Planning Commission and approved by the District Commissioners after public hearing as an appropriate unit of redevelopment planning for a redevelopment project separate from the redevelopment projects for other parts of the District of Columbia * * *".

Act of August 2, 1946, Title 5, c. 7, Sec. 705(b), General and Project Area Redevelopment Plans.

"For the exercise of the powers granted to the Agency by sections 5-701 to 5-719 for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

- (1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners.

(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Commissioners of the redevelopment plan of the project area

* * *".

Act of August 2, 1946, as amended, Title 5, c. 7, Sec. 717 (k), Acceptance of financial assistance authorized.

"In addition to its authority under any other provision of this chapter, the Agency is hereby authorized to plan and undertake urban renewal projects (as such projects are defined in Title I of the Housing Act of 1949, as amended), and in connection therewith the Agency, the District Commissioners, the National Capital Planning Commission, and the District of Columbia shall have all of the rights and powers which they have with respect to a project or projects financed in accordance with the preceding subsections of this section: Provided, That for the purpose of this subsection the word 'redevelopment' wherever found in this chapter (except in section 5-702 (n)) shall mean 'urban renewal', and the references in section 5-705 to the acquisition, disposition, or assembly of real property for a project shall mean the undertaking of an urban renewal project."

Federal Rule of Civil Procedure Involved

Rule 56. Summary Judgment

"b. For Defending Party. A party against whom a claim, counter-claim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

c. Motion and Proceedings Thereon. * * * The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. * * *

STATEMENT OF POINTS

1. The Court erred in granting defendants' motion for summary judgment where there existed genuine issues of material fact.

SUMMARY OF ARGUMENT

The District of Columbia Redevelopment Act and the Housing Acts of 1949 and 1954, as amended, provide that two public hearings are required before the Commissioners can approve a redevelopment plan or an urban renewal plan for a project area. The first hearing must be provided after the National Capital Park and Planning Commission adopts project area boundaries and submits such boundaries to the District Commissioners. The second hearing is required after adoption by the Planning Commission of a Redevelopment or Urban Renewal Plan.

At a Board Meeting on January 20, 1956, the District Commissioners approved the George Washington University Urban Renewal Area boundaries submitted to them by the Planning Commission. The meeting of the Commissioners was held without notice or hearing as required by statute.

Plaintiffs own considerable land in the area affected this action of the Commissioners. Plaintiffs filed a motion for preliminary injunction against the defendants, challenging their action. Before plaintiffs were afforded a hearing upon this motion the Court granted defendants' motion for summary judgment.

Genuine issues of fact were raised by the complaint, motion and oral argument.

Plaintiffs contended therein, (1) that notice and public hearing are required by statute before the Commissioners can approve and designate boundaries for a project area for urban renewal; (2) that on January 20, 1956, the Commissioners, without notice or hearing, approved and designated boundaries for the George Washington University Urban Renewal Project Area; and (3) that plaintiffs' property is within the area designated as the George Washington University Urban Renewal Project Area, and that the value thereof has been affected by defendants' actions, irreparably injuring plaintiffs' property rights.

The Findings of Fact adopted by the Court included findings in direct contradiction to plaintiffs' contentions above.

There exist, therefore, genuine issues of fact going to the very essence of plaintiffs' case, and the Court committed error in granting defendants' motion for summary judgment.

ARGUMENT

Where the complaint stated a case for equitable relief and raised genuine issues of fact, it was error for the court to grant defendants' motion for summary judgment.

The lower Court, over vigorous objection by the plaintiffs, adopted many findings of fact which, if they were not entirely unsupported by the evidence in the record, were at least susceptible of substantial doubt. These facts, as will be demonstrated below, were material to plaintiffs' case.

It is a well settled principle of law that one who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact and any doubt as to the existence of such an issue is resolved against the movant. Wittlin v. Giacalone, 154 F.2d 20, 81 U.S. App. D.C. 20.

Among the Findings of Fact adopted by the court which fall into the category described above, are three to which plaintiffs take particular exception and upon which they pitch their appeal. These are:

(1) In paragraph 3 of Findings of Fact, the statement that defendants held a "semi-public meeting" on January 20, 1956;

(2) In paragraph 10 of Findings of Fact, the statement that "defendants, by their resolutions of January 20, 1956 and March 6, 1956 did not designate the area delineated therein as an Urban Renewal Project Area and did not finally fix boundaries for such a project area"; and,

(3) In paragraph 11, of the Findings of Fact, the statement that "it cannot be determined whether plaintiffs' properties will be included in the area finally decided upon and whether, if so included, any plan which is proposed to operate in such area will affect plaintiffs' properties."

Each of these findings is examined more closely below.

As to (1), above:

Under the provisions of the District of Columbia Redevelopment Act of 1945, and the Housing Acts of 1949 and 1954, as amended, it is clear that the Board of Commissioners of the District of Columbia must provide for a public hearing before they can approve a "project area" for redevelopment or urban renewal adopted by the National Capital Park and Planning Commission.

Section 5-705 (b), D. C. Code 1951, furnishes the procedural steps to be followed by the Commissioners and the Planning Commission in the redevelopment of a project area. In all, two public hearings are required before a redevelopment plan can finally be approved by the Commissioners; we are here primarily concerned with the first of these two hearings. Section 5-717 (i), D. C. Code 1951, (supra), furnishes the authority for the Commissioners to undertake "urban renewal," following the same procedure, however, as that provided under Section 5-705 (b) (supra) for redevelopment.

The initial step, the adoption of project area boundaries, is governed by the following language, found in Section 5-705 (b) (1), of the said Code:

"Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners." (Emphasis ours)

"Project Area" is defined in Section 5-702 (j) as:

" * * * an area of such extent and location as may be adopted by the Planning Commission and approved by the District Commissioners after public hearing as an appropriate unit of redevelopment planning for a redevelopment project * * * " (Emphasis ours).

The statute is, therefore, specific and unambiguous in its requirement of a public hearing before adoption by the Commissioners of project area boundaries.

The meeting of January 20, 1956, is characterized as "semi-public" by the Findings of Fact. The said meeting was not "public" in any sense of the word. It was, to recite the minutes of the meeting, a "Special Board Meeting." In the words of Commissioner Samuel Spencer, the then President of the Board of Commissioners, as found in his deposition on page 26 of the Joint Appendix, " . . . it was the kind of meeting or hearing which we frequently conduct on matters where we think we know the interested parties, and we simply ask them to come in and talk this thing over." It was, in other words, a special meeting which was attended by special persons, besides the Commissioners, whom the Commissioners themselves decided they would invite. Such a meeting, under the circumstances, cannot possibly bear the vaguest resemblance to a "semi-public" meeting. It was termed "semi-public" only in an effort to create the impression that the requirement of a "public hearing," under Section 5-705 (b) (1) had been fulfilled.

As to (2) above:

Reference is made once again to the Minutes of the January 20, 1956 of the defendants and the results of the Executive Session of the meeting. These Minutes, the official record of an official act, recite very plainly "The Commissioners held a Special Board Meeting today. . . to consider approval of the proposed GEORGE WASHINGTON UNIVERSITY RENEWAL AREA . . .", and later, "Following the hearing the Commissioners went into Executive Session and . . . unanimously approved the area boundaries of the proposed George Washington University Urban Renewal Area . . ." Following that statement is a detailed description of the "Revised Boundaries of the George Washington University Urban Renewal Project Area" (J.A. 30-31).

It is indeed, highly improbable, if not altogether inconceivable, that defendants, distinguished gentlemen of great experience in these very matters, did not mean to do exactly what the minutes recite that they did, and that is to proceed outside the statute in order to accomplish Step 1, the adoption of an urban renewal area and the fixing of the boundaries thereof.

As to (3) above:

Plaintiffs' complaint establishes the plaintiffs' ownership of property within the area in question. The Minutes of the January 20, 1956 meeting state that the boundaries of said area, clearly delineated, were "approved . . . provided said area boundaries are adopted by the National Capital Planning Commission, as recommended . . ."

The Planning Commission, on February 2-3, 1956, "with minor typographical changes, accepted the proposal of the Commissioners for revision of the area boundaries," and, accordingly, forwarded a resolution to the Commissioners, adopting the modified boundaries.

Assuming, arguendo, that the boundaries, as fixed by the Commissioners and the Planning Commission, were to be further modified at some later date, this does not in any way alter the fact that, for an

indefinite period of time which may be days or years, plaintiffs' property lies within the area so designated. Plaintiffs introduced affidavits of two well-known and highly qualified and respected members of the real estate profession who stated unequivocally that the mere appellation of the area as a project area for Urban Renewal depresses the values of the property in the area, renders the property virtually unsaleable for its highest economic uses and true values, and does irreparable injury to the plaintiffs. The affidavits of these gentlemen remain uncontradicted.

Under Rule 56(c), Federal Rules of Civil Procedure, summary judgment is authorized only where it affirmatively appears from the pleadings, depositions, admissions on file and affidavits that, except as to amount of damages there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Porter v. Jones, C.A. Okla. 1949, 176 F.2d 87, cert. den. 70 S. Ct. 188, 338 U.S. 885, 94 L. Ed. ____.

Where there exists a genuine issue as to any material fact, judgment can properly be entered against plaintiff only if, on undisputed facts, he has no valid claim. Zell v. American Seating Co., C.C.A.N.Y. 1943, 133 F.2d 222.

In Embassy Dairy v. Camalier, 211 F.2d 41, 93 U.S. App. D.C. 364, decided by this court in 1954, plaintiff dairy company sought injunctive relief against an order of the District Commissioners requiring District of Columbia inspection and licensing of milk brought into the District for processing, though the milk was destined for consumers outside the District. The District Court granted defendants' motion to dismiss. Challenging the manner in which the Commissioners and Director of Health applied the inspection and licensing requirements of the District of Columbia Milk Act, the dairy grounded its appeal upon the absence of statutory authority for such an order of the Commissioners. This Court, in remanding the case to the District Court, stated that, in its opinion, the Commissioners' interpretation of the controlling section of the Milk

Act was unwarranted, that the plaintiff was faced with irreparable injuries, that there was a legislative declaration of rights, and that there was occasion to resort to equitable remedies under the circumstances.

Appellants, in the case at bar, are faced with a similar legislative declaration of rights by the Commissioners, irreparable injuries and must resort to equitable remedies.

CONCLUSION

The Court below erred in granting the motion of the defendants for summary judgment since plaintiffs presented a case for equitable relief which raised genuine and material issues of fact.

Respectfully submitted,

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JOINT APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

1 [Filed Feb. 16, 1956]

ISADORE M. GUDELSKY,
6524 16th Street, N.W.,
Washington, D.C.

HARRY GUDELSKY,
913 Whitelock St.,
Baltimore, Md.

HOMER GUDELSKY,
9218 Colesville Road,
Silver Spring, Md.

JEROME SCHEFFRES,
8901 Woodland Drive,
Silver Spring, Md.

EUGENE SCHEFFRES
4435 Linnean Ave., N.W.
Washington, D.C.

LILLIAN SCHEFFRES TURNER,
8903 Woodland Drive,
Silver Spring, Md.

Plaintiffs,

vs.

Civil Action No. 700-56

SAMUEL SPENCER
ROBERT E. McLAUGHLIN
BRIG. GEN. THOMAS A. LANE,
District Building,
14th and Pennsylvania Avenue, N.W.,
Washington, D.C., individually and as the
Commissioners of the District of Columbia,

Defendants

COMPLAINT FOR TEMPORARY RESTRAINING

ORDER, PERMANENT INJUNCTION AND OTHER RELIEF

The Complaint of the plaintiffs respectfully shows unto this Court:

1. That the amount in controversy is in excess of Three Thousand (\$3,000.00) Dollars.

2. That the individual defendants constitute and are, and for some

time past have been, the members composing the Board of Commissioners of the District of Columbia, a Board created under and by the Act of the Congress of the United States, cited as 20 Stat. , 102, Ch. 180, Sec. 2, approved June 11, 1878, as amended.

3. That the plaintiffs are owners in fee simple of original lots numbered Five (5), Thirteen (13) and part of original lot numbered Four (4) Square Thirty-two (32), said lot numbered Five (5) and part of lot numbered Four (4) being now known for assessment and taxation purposes as lots numbered Eight Hundred Four (804) and Eight Hundred Five (805) in Square numbered Thirty-two (32); also lot numbered Thirty-one (31) in Abner Drury Brewing Company's combination of lots in said Square numbered Thirty-two (32), as per plat recorded in Liber 45 at Folio 99 in the Office of the Surveyer for the District of Columbia, which plaintiffs acquired at a cost of approximately \$600,000.00, with the express intention of building thereon a multi-million dollar structure, of a design and use in keeping with the beautiful buildings projected by other private owners such as Peoples Life Insurance Company and Potomac Plaza in the area.

4. On January 20, 1956, the defendants as members of said Board of Commissioners and purporting to act under Title 5 of the District of Columbia Code, Secs. 700-719, as amended, but in violation of the express terms of that Act, and without affording notice of hearing to plaintiffs and other residents, owners and parties in interest whose properties were included in the area, designated as a Project Area for Urban Renewal, all that land south of Pennsylvania Avenue, N.W., bounded on the East by 19th Street, N.W., on the South by New York Avenue, Virginia, E Street and Water Street, and on the West by the Rock Creek and Potomac Parkway; North to a point at which the said parkway intersects Virginia Avenue, then generally North along Rock Creek to Pennsylvania, being the North boundary of the aforesaid area.

5. Plaintiffs state that the announced purposes of the designation of this area as the George Washington University Urban Renewal Area were:

1) To acquire land for the expansion of George Washington University, a privately owned and operated educational institution having no governmental functions; and

2) For slum clearance.

Plaintiffs aver that this action on the part of the defendants is confiscatory, arbitrary, unjust, discriminatory and unlawful in that:

1) It attempts to apply legislation devised for blighted areas and requiring extensive slum clearance to an area in which more than 300 parcels of ground have been bought and sold for private development within the past three years at an increase in value, in many instances, of over 100% from the prices theretofore paid not more than five years before transfers;

3

2) That contrary to the Act more than 50% of the area consists of open ground or ground scheduled for clearing either by the appropriate division of the District of Columbia Government in compliance with the Insanitary Buildings Act or by private organizations and investors who have purchased the land expressly for the purpose of immediately erecting thereon modern buildings of great value;

3) In that the defendants, contrary to the statute, propose to use the right of eminent domain for the private purposes, advancement and expansion of George Washington University by taking land from private owners under the procedures outlined in the aforesaid statute and conveying the same to the aforesaid institution;

4) Although the aforesaid statute specifically requires that a public hearing be held (after notice) before the Board of Commissioners may designate a Project Area for Urban Renewal, at which time evidence could be adduced to show that this area does not need Urban Renewal and is not such an area within the contemplation of the statute, these provisions of the statute were not complied with;

5) As a result of the designation of this area as an Urban Renewal Area the value of plaintiffs' land has been irreparably diminished because of the common knowledge that such a designation

brings with it a stagnation of the area for any private development and improvement because it deters investment capital and development capital which are necessary for the construction of the improvements designed for the area. The action of the defendants has critically impeded the saleability of plaintiffs' land because it has rendered doubtful its immediate uses, restricted the number of purchasers who can invest for an indeterminate period without return, and depreciated the values of adjoining land by deterring investment and building and denominated what is otherwise very valuable land whose economic use is that for improvements bringing the highest type of return, to be an area for low cost housing with a minimum return by reason of the provisions of the statute.

6. That as a result of the actions of the defendants, plaintiffs will be unable to proceed with the aforementioned plans for an indefinite period of time, estimated at ten (10) years or more, during which time plaintiffs' property will deteriorate in value, resulting in unwarranted and unnecessary loss to the plaintiffs as well as to others similarly situated.

WHEREFORE the premises considered, plaintiffs pray:

1. That a temporary restraining order issue out of this Honorable Court, restraining the defendants from continued designation of the aforesaid area as a Project Area for Urban Renewal.

4 2. That upon final hearing upon the merits, a permanent injunction issue, permanently restraining and enjoining the defendants from their designation of this area as an Urban Renewal Area, or as a Project Area for Urban Renewal.

3. And for such other and further relief as to the Court may seem just and reasonable.

/s/ H. Max Ammerman

/s/ William T. Hannan

Attorneys for Plaintiffs

* * *

5 [Filed Feb. 29, 1956]

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, Isadore M. Gudelsky, Harry Gudelsky, Homer Guldelsky, Jerome Scheffres, Eugene Scheffres and Lillian Scheffres Turner, move the Court for a preliminary injunction in the above entitled cause, enjoining the defendants, their agents, servants, employees, attorneys and all persons in active concert or participation with them pending the final hearing and determination of this cause from continuing their designation as a Project Area for Urban Renewal of the area in the Northwest section of the City of Washington, D. C., bound on the north by Pennsylvania Avenue; on the East by 19th Street; on the South by New York Avenue, Virginia Avenue, E Street, West to 25th Street and Water Street; on the West by Rock Creek and Potomac Parkway, 24th and 25th Streets, Virginia Avenue and Rock Creek, being the same area which was designated by them as a Project Area for Urban Renewal, while the defendants were acting as members of the Board of Commissioners for the District of Columbia on January 20, 1956.

The grounds in support of this Motion are as follows:

(1) Unless restrained, the defendants will persist in their designation of the said area as a Project Area for Urban Renewal;

(2) Immediate and irreparable injury, loss and damage will result to plaintiffs by reason of the unlawful designation by the defendants of the said area as a Project Area for Urban Renewal as more particularly set forth in the Complaint and Affidavits filed herein;

(3) If defendants persist in their designation of said area as a Project Area for Urban Renewal, any judgment which this Court may render later on final determination of this cause will be ineffective;

(4) If this preliminary injunction be granted, the injury, if any, to defendants herein if final judgment be in their favor will be inconsiderable and will be adequately indemnified by bond.

/s/ H. Max Ammerman

HANNAN & CASTIELLO

By /s/ William T. Hannan
Attorneys for Plaintiffs

(CERTIFICATE OF SERVICE)

17 [Filed Mar. 16, 1956]

**MOTION TO DISMISS, OR IN THE ALTERNATIVE,
FOR SUMMARY JUDGMENT**

Defendants move the court to dismiss the above entitled action or, in the alternative, to enter summary judgment in their favor for the reasons that the complaint, when considered with the affidavits of G. M. Thornett and Robert E. Mathe and the exhibits attached thereto, all incorporated herein by reference, fails to state a claim upon which relief can be granted and demonstrates that there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law.

/s/ Vernon E. West
Corporation Counsel, D. C.

/s/ Milton D. Korman
Ass't Corporation Counsel, D. C.

/s/ J. Hampton Baumgartner, Jr.
Ass't Corporation Counsel, D. C.

Attorneys for Defendants
* * *

(CERTIFICATE OF SERVICE)

18 [Filed Mar. 20, 1956]

AFFIDAVIT OF G. M. THORNETT

G. M. Thornett, being duly sworn, on oath deposes and says:

I am the Secretary to the Board of Commissioners of the District of Columbia and, as such, I am officially charged with the custody and control of the official minutes of the meetings of the Board of Commissioners and the correspondence of the Commissioners. Attached hereto are true and accurate copies of the following:

- A. Extract of the minutes of the meeting of the Board of Commissioners held Tuesday, December 27, 1955 (Exhibit 1A).

- B. Minutes of the meeting of the Board of Commissioners held on January 20, 1956 (Exhibit 1B).
- C. Extract of the minutes of the meeting of the Board of Commissioners held on March 6, 1956 (Exhibit 1C).
- D. Letter from Mr. Harland Bartholomew, concerning the George Washington area, dated February 17, 1956 (Exhibit 1D).
- 19 E. Resolution of the National Capital Planning Commission, dated February 2-3, concerning the George Washington area (Exhibit 1E).
- F. Letter of Samuel Spencer, President of the Board of Commissioners, D.C., to Mr. Harland Bartholomew, dated March 8, 1956 (Exhibit 1F).

/s/ G. M. Thornett

Secretary, Board of
Commissioners

Subscribed and sworn to before me this 14th day of March, 1956.

/s/ Francis L. Timmons, Jr.
Notary Public
D. C.
* * *

20

[Filed March 20, 1956]

EXHIBIT 1A

COMMISSIONERS OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE, WASHINGTON

Tuesday, December 27th, 1955

Present: Commissioner Samuel Spencer, President of the Board;
Commissioner Robert E. McLaughlin; Commissioner Thomas A. Lane;
Brig. General, U.S.A., Engineer Commissioner, and F. L. Timmons,
Jr., Acting Secretary to the Board.

The Board met at 10 o'clock a.m.

- - - - -

The Commissioners, at their Board Meeting today, further considered the FOGGY BOTTOM RENEWAL PROJECT of the Redevelopment Land Agency with Colonel Mathe present.

After a full discussion of the boundaries proposed by the Redevelopment Land Agency and the area which had previously been approved by the NCPC, the Commissioners reduced the size of the Foggy Bottom Urban Renewal area proposed by the NCPC and the Redevelopment Land Agency by excluding from this project the proposed Potomac Plaza area and the Peoples Life Insurance Company developments. Following is the description of the area approved by the Commissioners:

Beginning for the same at a point on the southwesterly line of Pennsylvania Avenue, said point of beginning being the intersection of the said southwesterly line of Pennsylvania Avenue with the easterly line of Rock Creek and Potomac Parkway (U.S. Reservation 360); and running thence in a southeasterly direction on the extension of said easterly line of Rock Creek and Potomac Parkway to its intersection with the northeasterly line of Pennsylvania Avenue; thence southeasterly along the said northeasterly line of Pennsylvania Avenue to its intersection with the center line of 24th Street; thence south along the center line of 24th Street to the center line of H Street; thence west along the center line of H Street to the center line of Virginia Avenue; thence northwesterly along the center line of Virginia Avenue to the easterly boundary of Rock Creek and Potomac Parkway; thence along the boundary of Rock Creek and Potomac Parkway to the point of beginning.

In approving this project, the Commissioners did not act on the companion proposal of the NCPC and the RDA for an adjoining renewal project in the George Washington University area, in that they hope to have modified plans for this project ready soon, perhaps including in it a strip of square between 23rd and 24th, excluded from the Foggy Bottom project. This strip of land is the proposed site of part of the west leg of the interloop Freeway and would be considered for inclusion in the George Washington University area.

The action of the Commissioners will permit the Redevelopment Land Agency to apply to the Housing and Home Finance Agency for funds to survey the area and to draft a plan for its development. (G. F. 5-704)

21

[Filed March 20, 1956]

EXHIBIT 1B

(Special Meeting)

COMMISSIONERS OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE, WASHINGTON

Friday, January 20th, 1956

Present: Commissioner Samuel Spencer, President of the Board, Commissioner Robert E. McLaughlin; Commissioner Thomas A. Lane, Brig. General, U.S.A., Engineer Commissioner, and G. M. Thornett, Secretary to the Board.

The Commissioners held a Special Board Meeting today, at ten o'clock a.m. to consider approval of the proposed GEORGE WASHINGTON UNIVERSITY RENEWAL AREA and modification of the boundaries thereof.

The following were present:

Commissioner Samuel Spencer

Commissioner Robert E. McLaughlin

Commissioner Thomas A. Lane

Vernon E. West, Corporation Counsel

Lt. Colonel Thomas B. Hunter, Assistant Engineer Commissioner

Edward Flickinger, Executive Assistant, Office of Urban Renewal

Representing George Washington University:

Dr. Cloyd H. Marvin

Henry W. Herzog

Robert V. Fleming

Chas. H. Tompkins

John A. McLaughlin

Alfred H. Lawson

Newell W. Ellison

Harry L. Merrick, Washington Board of Trade

Harvey L. Jones, Washington Real Estate Board

Hugh V. Gittinger, Jr., Washington Real Estate Board

David Hornstein, Gelman Enterprises

W. Cameron Burton, Christian Heurich Brewing Company

John Lewis Smith, Jr., Lots in Square 17

Thomas M. Walsh

Doctor Marvin stated that the Board of Trustees of the George Washington University had prepared and sent to the Board of Commissioners of the District of Columbia a special report requesting approval of the boundaries of the George Washington University Urban Renewal Area. A copy of the report referred to is attached to G. F. 5-704.

Mr. Newell Ellison stated that the Board of Trustees of the University had a meeting several days ago and voted unanimously in favor of the request that this area be designated as a renewal area.

He stated that the University now has 18,000 students and in the next 15 years, if present estimates are correct, the number will increase to 30,000 students.

Mr. Fleming endorsed the statements of Mr. Ellison.

Mr. Herzog discussed the report and stated that the whole report could be summarized briefly by reading the conclusion. The conclusion reads as follows:

"Conclusion

The designation, pursuant to the recommendation of the NCPC, of the University area as an urban renewal area, would represent a recognition, and a significant though preliminary step toward the meeting, of three basic objectives:

(1) The rehabilitation of, and elimination of conditions of blight in, a key area in the heart of the District. This will be in active furtherance of the statutory objectives, as expressed and emphasized both in the Federal and District urban renewal legislation,

for a thorough-going 'attack' by our urban communities generally, and the District specifically, on the whole process of urban decay;

(2) The affirmative and effective direction by the District - again in furtherance of indicated statutory objectives of its general development and growth in the overall public interest, and particularly from the perspective of enabling the District to perform its special function as the Nation's Capital;

(3) The provision of a proper environment and opportunity for development for one of the community's educational institutions - in accord with the concept, as advanced by George Washington himself, of the District as not only a physical situs of the Government but as an educational and intellectual center.

The University has had to plan and persevere, usually with limited means, to overcome obstacles, based on environmental and special historical factors, in making its contribution to the community and to the country in this respect. As indicated by its new Hospital Building, the Cancer Clinic Building, Monroe Hall, the Tompkins Hall of Engineering Building (now under construction), and its projected law and medical centers, the University has now succeeded in overcoming these obstacles and is on the threshold of making a fuller and still more effective contribution. It would appreciate a complete opportunity to do so. It would be particularly grateful, in view of its substantial investment in the area, if such an opportunity were not now foreclosed to it."

Mr. Charles H. Tompkins stated that if this area is declared a urban renewal area, he could not see how the University could in any way hurt any property or any property owners whose property is now well developed such as the Red Cross Building; so what harm can come to any one having real estate in this area by the development of a plan for the City as a whole.

Mr. Lawson stated that the approval of this plan would facilitate the completion of the development of the University.

Mr. John Remon, Chairman of the Redevelopment Land Agency, stated that the Redevelopment Land Agency was unanimously in favor of this proposal and wanted to do everything possible to cooperate with George Washington University to improve this great cultural institution. He stated that the members of the Agency felt that they had the legal power to go forward once a plan has been approved.

Mr. Flickinger read and discussed a report made by Lt. Col. Robert E. Mathe, Assistant Engineer Commissioner, to the Board of Commissioners, under date of January 17, 1956, which contains his recommendation "that the Board of Commissioners approve the George Washington University urban renewal area, provided the boundaries are modified as proposed above and adopted by the National Capital Planning Commission."

A number of persons representing owners of property included in the planning area, are contiguous thereto, spoke in opposition to any renewal project for the region. It was their contention that private activity in the area points towards substantial new construction and that the plan would endanger expensive private development plans. The names of those opposing the project are listed below:

23 David Hornstein, Gelman Enterprises
 John Lewis Smith, Jr., Lots in Square 17
 W. Cameron Burton, Christian Heurich Brewing Company
 Thomas M. Walsh
 Norman M. Glasgow, Potomac Parkway Plaza
 William T. Hannon, Peoples Life
 H. Max Ammerman
 John M. London

Following the hearing the Commissioners went into Executive Session and after a general discussion of the points raised during the open hearing unanimously approved the area boundaries of the proposed George Washington University Urban Renewal Area, provided said area boundaries are adopted by the National Capital Planning Commission, as recommended in the report of Colonel Mathe dated January 17, 1956, referred

to above, and shown on plat attached to said report. This plat was exhibited by Flickinger at the meeting.

Following is a Description of the Revised Boundaries of The George Washington University Urban Renewal Project Area:

Beginning for the same at a point on the northeasterly line of Pennsylvania Avenue, said point of beginning being the intersection of the said northeasterly line of Pennsylvania Avenue with the center line of 24th Street; and running thence southeasterly along the said northeasterly line of Pennsylvania Avenue to its intersection with the westerly line of Washington Circle (U.S. Reservation 26); thence along the said westerly, southerly and easterly lines of Washington Circle to a point where said Circle is intersected by the said northeasterly line of Pennsylvania Avenue; thence in a Southeasterly direction along said northeasterly line of Pennsylvania Avenue to its intersection with the east line of 19th Street; thence South along the said east line of 19th Street to the southeasterly line of New York Avenue, thence Southwesterly along the said southeasterly line of New York Avenue to the southwesterly line of Virginia Avenue; thence Northwesterly along the said southwesterly line of Virginia Avenue to the south line of E Street; thence West along the said south line of E Street to the east line of 25th Street; thence South along the said east line of 25th Street to a point where the southeasterly extension of the southwesterly line of Water Street intersects the said east line of 25th Street; thence Northwesterly along the said southwesterly line of Water Street to the west line of 26th Street; thence South along the said west line of 26th Street to a point where the southeasterly extension of the northeasterly boundary of West Potomac Park (U.S. Reservation 332) intersects said west line of 26th Street; thence in a Northwesterly direction along the said northeasterly line of West Potomac Park to the easterly boundary of Rock Creek and Potomac Parkway (U.S. Reservation 360); thence along said easterly boundary of Rock Creek and Potomac Parkway to the intersection of said easterly boundary of Rock Creek and Potomac Parkway with the center line of F Street; thence East along the said center line of F Street to the center line of 25th Street; thence North along the said

center line of 25th Street to the center line of G Street thence East along said center line of G Street to the center line of 24th Street; thence North along the said center line of 24th Street to the said northeasterly line of Pennsylvania Avenue and the point of beginning. (G. F. 5-704)

The Commissioners at their Board Meeting today unanimously approved the following Resolution with respect to the proposal for the Redevelopment of a portion of the Southwest Section of the District of Columbia (Southwest Redevelopment Project Area C-1):

That the Commissioners of the District of Columbia, sitting as a Board, have, pursuant to Section 8 of the District of Columbia Redevelopment Act of 1945, as amended, satisfied themselves on the basis of data furnished them by the Redevelopment Land Agency in a memorandum dated January 5, 1956, that decent, safe and sanitary housing substantially equal in quantity to the number of substandard dwelling units to be removed or demolished within the project area, under the proposed Redevelopment Plan, as modified, are available or will be provided (by construction pursuant to the Redevelopment Plan, or otherwise) in localities, and at rents or prices within the reach of the families displaced or to be displaced (temporarily or permanently) pursuant to the Redevelopment Plan from the project area. (G. F. 5-703 Area C-1)

25

[Filed March 20, 1956]

EXHIBIT 1C

COMMISSIONERS OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE, WASHINGTON

Tuesday, March 6, 1956

Present: Commissioner Samuel Spencer, President of the Board; Commissioner Robert E. McLaughlin; Lt. Col. Thomas B. Hunter, U.S.A., Acting Engineer Commissioner and G. M. Thornett, Secretary to the Board.

The Board met at 10 o'clock a.m.

**RESOLUTION CLARIFYING ACTIONS OF DECEMBER 27, 1955
AND JANUARY 20, 1956 RE FOGGY BOTTOM AND GEORGE
WASHINGTON SURVEY AREAS.**

WHEREAS, during the months of December 1955 and January 1956 the Commissioners considered at length proposals by the National Capital Planning Commission and the District of Columbia Redevelopment Land Agency that the Commissioners take the necessary action to enable the Redevelopment Land Agency to apply to the Housing and Home Finance Agency for funds to conduct surveys and studies of the area of the District of Columbia known as Foggy Bottom and the area of the District of Columbia adjacent thereto and in the vicinity of the George Washington University to determine whether, in conformity with powers vested by law in the Commissioners, in the Redevelopment Land Agency, and in the National Capital Planning Commission, it is feasible and in the public interest to carry out urban renewal projects in such areas, information having been heretofore given to the Commissioners indicating that there is a need for the establishment of urban renewal projects in such areas, but the Commissioners being, on available information, unable to make a determination thereon; and

WHEREAS, the Commissioners concurred in these recommendations and adopted formal resolutions on December 27, 1955 and January 20, 1956 delineating the boundaries within which such surveys should be conducted; and

26 **WHEREAS**, in the course of the discussions and in the formal resolutions adopted by the Commissioners the action taken by the Commissioners was described under various designations and included expressions such as "adoption" or "approval" of "urban renewal project areas", and included a description of one of said areas as the "George Washington University" area; and

WHEREAS, the Commissioners are advised that the use of the word "university" in designating one of the areas and the use of the word "project" in the said discussions and resolutions has resulted in confusion as to the intent and purpose of the action of the Commissioners

regarding said areas; and

WHEREAS, the Commissioners desire to make clear their actions concerning said areas; it is

ORDERED,

(1) That the Commissioners find

(A) That it is advisable to conduct surveys and studies in the areas hereinafter defined to determine whether it is feasible and in the public interest to carry out urban renewal projects in such areas in conformity with the powers vested by law in the Commissioners, in the District of Columbia Redevelopment Land Agency, and in the National Capital Planning Commission, and if, as a result of such surveys and studies and after public hearing, it appears that an urban renewal project or projects within specified boundaries in such areas is or are feasible and in the public interest, to authorize proper public agencies to proceed therewith in accordance with law.

(B) That funds are not available for the making of such surveys and studies and that a need exists for financial assistance under Title I of the Housing Act of 1949, as amended; and

27

(2) The District of Columbia Redevelopment Land Agency is hereby authorized to apply to the Administrator of the Housing and Home Finance Agency for the necessary funds to conduct surveys and studies for the purpose hereinabove set forth;

(3) The surveys and studies shall be conducted in

(A) The Foggy Bottom Area, as follows:

Beginning for the same at a point on the southwesterly line of Pennsylvania Avenue, said point of beginning being the intersection of the said southwesterly line of Pennsylvania Avenue with the easterly line of Rock Creek and Potomac Parkway (U.S. Reservation 360); and running thence in a northeasterly direction on the extension of said easterly line of Rock Creek and Potomac Parkway to its intersection with the northeasterly line of Pennsylvania

Avenue; thence southeasterly along the said northeasterly line of Pennsylvania Avenue to its intersection with the center line of 24th Street; thence South along the center line of 24th Street to the center line of H Street; thence West along the center line of H Street to the center line of Virginia Avenue; thence northwesterly along the center line of Virginia Avenue to the easterly boundary of Rock Creek and Potomac Parkway; thence along the boundary of Rock Creek and Potomac Parkway to the point of beginning; and
 (B) The George Washington Area, as follows:

Beginning for the same at a point on the northeasterly line of Pennsylvania Avenue, said point of beginning being the intersection of the said northeasterly line of Pennsylvania Avenue with the center line of 24th Street; and running thence Southeasterly along the said northeasterly line of Pennsylvania Avenue to its intersection with the westerly line of Washington Circle (U.S. Reservation 26); thence along the said westerly, southerly and easterly lines of Washington Circle to a point where said Circle is intersected by the said northeasterly line of Pennsylvania Avenue; thence in a Southeasterly direction along said northeasterly line of Pennsylvania Avenue to its intersection with the east line of 19th Street; thence South along the said east line of 19th Street to the southeasterly line of New York Avenue; thence Southwesterly along the said southeasterly line of New York Avenue to the southwesterly line of Virginia Avenue; thence Northwesterly along the said southwesterly line of Virginia Avenue to the south line of E Street; thence West along the said south line of E Street to the east line of 25th Street; thence South along the said east line of 25th Street to a point where the southeasterly extension of the southwesterly line of Water Street intersects the said east line of 25th Street; thence Northwesterly along the said southwesterly line of Water Street to the east line of 26th Street; thence South along the said east line of 26th Street to a point where the southeasterly extension of the northeasterly boundary of West Potomac Park (U.S. Reservation 332) intersects said east

line of 26th Street; thence in a Northwesterly direction along the said northeasterly line of West Potomac Park to the easterly boundary of Rock Creek and Potomac Parkway (U.S. Reservation 360); thence along said easterly boundary of Rock Creek and Potomac Parkway to the intersection of said easterly boundary of Rock Creek and Potomac Parkway with the center line of F Street; thence East along the said center line of F Street to the center line of 25th Street; thence North along the said center line of 25th Street to the center line of G Street; thence East along said center line of G Street to the center line of 24th Street; thence North along the said center line of 24th Street to the said northeasterly line of Pennsylvania Avenue and the point of beginning.

Any action concerning either of the foregoing areas heretofore taken by the Commissioners on December 27, 1955 and January 20, 1956 which is inconsistent with this order is hereby rescinded.

29

[Filed March 20, 1956]

EXHIBIT 1D

NATIONAL CAPITAL PLANNING COMMISSION
WASHINGTON 25, D. C.

February 17, 1956

Honorable Samuel Spencer, President
Board of Commissioners of the
District of Columbia
Washington 4, D. C.

Dear Mr. Spencer:

Reference is made to your letter dated January 30, 1956, whereby the Board of Commissioners, presumably under Section 12 of the D. C. Redevelopment Act of 1945, referred back to the National Capital Planning Commission boundaries for the George Washington Urban Renewal Project Area with recommendations for modification thereof.

In accordance with your request, the Commission at its meeting on February 2-3, 1956, reconsidered the boundaries previously adopted and,

with minor typographical changes, accepted the proposal of the Commissioners for revision of the area boundaries. Hereto attached are three certified copies of a resolution approved by the Commission adopting the modified boundaries. As provided by the Redevelopment Act, modified boundaries must subsequently be approved by the Commissioners. The matter is, accordingly, resubmitted to you for that purpose.

The purpose of adopting the boundaries, of course, is to enable the Redevelopment Land Agency to apply for a planning advance with which the Agency and the Planning Commission may undertake surveys and studies to determine the extent of slum and blighted areas and substandard housing conditions. This is preliminary to the development of an urban renewal project plan should the investigation prove such a plan was justified and necessary. The boundaries now adopted may be further modified upon completion of surveys and studies.

There is great need to make more definite and firm plans for extensive public improvements proposed throughout various parts of the area. Many of these proposals have been under consideration for some time, and the continuing uncertainty about them has had a cumulative blighting effect. Similarly, the widespread but scattered acquisitions by George Washington University have naturally retarded adjacent development because of public uncertainty as to plans for further acquisition and expansion by the University. In turn, the University advises that recent proposals of the District Government for the location of the Inner Loop express way will
 30 require change in its own plans to which the University has made substantial commitments. An urban renewal plan would serve to remove these uncertainties and reconcile conflicts to the benefit of all interests.

The area south of Virginia Avenue has been included within the project area boundaries primarily because of the need to establish a definite plan and policy for public improvements proposed or authorized to go within this area, all of which has been authorized for acquisition under the Public Buildings Act of 1926, as amended. The recent proposals of the District Government for the location of the expressway through this area require reconsideration of previous plans which may well involve

the relocation of streets and beneficial consolidation of properties not needed for the expressway under a different street plan.

Pointing up this need have been the recent proposals of private developers to construct substantial buildings within the authorized purchase area, even though adjoining portions are zoned for, and developed with, second commercial uses which continue to have an adverse and blighting effect upon the whole area.

If the Commissioners approve the boundaries adopted by the Commission, the surveys and studies proposed will have as one of their first objectives the delineation and review of all public and private development plans within the project area with the view of determining the nature and extent of conflicts that may exist and, through their removal, of eliminating one of the major causes of blight throughout various parts of the area.

Should the Commissioners approve the modified boundaries, it will be the policy of this Commission, as heretofore, to work closely with representative citizen or property owner groups and to give consideration to their views after the facts have been assembled and analyzed.

Sincerely yours,

/s/ Harland Bartholomew

Chairman

Atts.

EXHIBIT 1E

Appendix
February 2-3, 1956 Meeting

RESOLUTION

ADOPTING MODIFIED BOUNDARIES FOR THE GEORGE
WASHINGTON URBAN RENEWAL PROJECT AREA

WHEREAS, the National Capital Planning Commission, in conjunction with the District of Columbia Redevelopment Land Agency, has reviewed available surveys and various facts in a portion of Northwest

Washington in the vicinity of George Washington University;

WHEREAS, conditions of slum, blight and deterioration have been found to exist in this Area;

WHEREAS, such conditions are detrimental to the health, safety and welfare of the inhabitants and occupants of the area; and

WHEREAS, the Commission finds it necessary and in the public interest to undertake further surveys in an effort to develop coordinated plans for the area to allow sufficient open space, parking, play and recreation areas and other private and public uses and facilities in order to make the area a more healthful community and to coordinate and correlate efforts of voluntary rehabilitation by the University and others with Government improvement to insure, insofar as possible, against recurrence of detrimental conditions.

BE IT RESOLVED, That the National Capital Planning Commission hereby adopts modified boundaries of an area to be known as the George Washington Urban Renewal Project Area as shown on National Capital
32 Planning Commission Plan No. 21-449 and as described in metes and bounds, which shall govern, as follows:

Beginning for the same at a point on the northeasterly line of Pennsylvania Avenue, said point of beginning being the intersection of the said northeasterly line of Pennsylvania Avenue with the center line of 24th Street; and running thence Southeasterly along the said northeasterly line of Pennsylvania Avenue to its intersection with the westerly line of Washington Circle (U.S. Reservation 26); thence along the said westerly, southerly and easterly lines of Washington Circle to a point where said Circle is intersected by the said northeasterly line of Pennsylvania Avenue; thence in a Southeasterly direction along said northeasterly line of Pennsylvania Avenue to its intersection with the east line of 19th Street; thence South along the said east line of 19th Street to the southeasterly line of New York Avenue; thence Southwesterly along the said southeasterly line of New York Avenue to the southwesterly line of Virginia Avenue; thence Northwesterly along the said southwesterly line of Virginia

Avenue to the south line of E Street; thence West along the said south line of E Street to the east line of 25th Street; thence South along the said east line of 25th Street to a point where the southeasterly extension of the southwesterly line of Water Street intersects the said east line of 25th Street; thence Northwesterly along the said southwesterly line of Water Street to the east line of 26th Street; thence South along the said east line of 26th Street to a point where the southeasterly extension of the northeasterly boundary of West Potomac Park (U.S. Reservation 332) intersects said east line of 26th Street; thence in a Northwesterly direction along the said northeasterly line of West Potomac Park to the easterly boundary of Rock Creek and Potomac Parkway (U.S. Reservation 360); thence along said easterly boundary of Rock Creek and Potomac Parkway to the intersection of said easterly boundary of Rock Creek and Potomac Parkway with the center line of F Street; thence East along the said center line of F Street to the center line of 25th Street; thence North along the said center line of 25th Street to the center line of G Street; thence East along said center line of G Street to the center line of 24th Street; thence North along the said center line of 24th Street to the said northeasterly line of Pennsylvania Avenue and the point of beginning.

33 [Filed March 20, 1956]

EXHIBIT 1F

March 8, 1956

Mr. Harland Bartholomew, Chairman
National Capital Planning Commission
Washington 25, D.C.

Dear Mr. Bartholomew:

At their meeting on March 6, 1956, the Board of Commissioners adopted an order, two copies of which are enclosed for your information and records, intended to clarify the misunderstanding and confusion which apparently existed in the minds of the public concerning the actions taken

by the Board of Commissioners on December 27, 1955, and January 20, 1956, regarding the Foggy Bottom and George Washington areas of the District of Columbia.

You will note that the Commissioners authorized the Redevelopment Land Agency to apply, under the provisions of the Housing Act of 1949, as amended, for funds to conduct surveys in the areas described in the enclosed order. After such funds are made available and the surveys, which presumably will be made in cooperation with the Planning Commission, are completed, if the results substantiate the representations which heretofore were made to the Commissioners, the time will be ripe for the Planning Commission to adopt Project Area Boundaries and submit them to the Board of Commissioners for approval in accordance with the requirements of the District of Columbia Redevelopment Land Act of 1945.

Accordingly, the Commissioners return to you here with the resolutions of the National Capital Planning Commission adopting modified boundaries for the Foggy Bottom Urban Renewal Area and the George Washington Urban Renewal Area, which you had transmitted with your letters of February 17, 1956.

Very truly yours,

/s/ Samuel Spencer

President
Board of Commissioners, D. C.

34 [Filed March 20, 1956]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Isadore M. Gudelsky, et al.	)	
Plaintiffs,	)	
	)	Civil Action No. 700-56
v.	)	
	)	
Samuel Spencer, et al.,	)	
Defendants.	)	

AFFIDAVIT OF ROBERT E. MATHE

Robert E. Mathe, being duly sworn, on oath deposes and says:

I am a Lieutenant Colonel in the Engineer Corps of the United States Army assigned as Assistant Engineer Commissioner of the District of Columbia and as such have the special assignment of Assistant Engineer Commissioner for Urban Renewal. In that special capacity I am charged, under Organization Order No. 109 of the Commissioners of the District of Columbia, with the duty of working in close cooperation with the National Capital Planning Commission, the Redevelopment Land Agency and other bodies and organizations in the coordination of efforts looking to the development of plans and schedules for the execution of over-all urban renewal and slum prevention programs in the District of Columbia. Attached hereto marked "Exhibit 2A" is a map on which is shown a section of Northwest Washington which includes the areas designated by the Commissioners, D.C., on March 6, 1956 as the Foggy Bottom and George Washington areas for the purpose of obtaining funds for conducting surveys therein. Also shown are the square numbers of the various squares in the areas, the approximate location of the properties owned by the plaintiffs in the above-captioned civil action, and the location of the Federal Taking Area, established by the Public Buildings Act of 1926, as amended in 1938 and 1946.

/s/ ROBERT E. MATHE

35 (Subscribed and sworn to before me this ____ day of March, 1956)

Notary Public, D.C.

* * *

EXCERPTS FROM DEPOSITION OF SAMUEL SPENCER

66

Washington, D. C.
Monday, March 26, 1956

Deposition of Samuel Spencer, a witness of lawful age, taken on behalf of plaintiffs in the above-entitled cause, wherein Isadore M. Gudelsky, et al are the plaintiffs, and Samuel Spencer, et al are the defendants, pending in the District Court of the United States for the District of Columbia, pursuant to notice, before Albert J. Gasdor, a notary public in and for the District of Columbia, on the 26th day of March, 1956.

APPEARANCES:

WILLIAM T. HANNAN, ESQ. and KENT D. THORUP, ESQ.,
637 Woodward Building, Washington, D. C.
On behalf of the plaintiffs

MILTON D. KORMAN, ESQ. and JOHN H. BAUMGARTNER, JR.,
ESQ., Corporation Counsel, Room 325 District Building,
Washington, D. C.
On behalf of the defendants.

* * * * *

67

SAMUEL SPENCER

a witness named in the annexed notice, being of lawful age and being first duly sworn in the above cause, testified on his oath as follows:

* * * * *

68

DIRECT EXAMINATION

BY MR. HANNAN:

* * * * *

Q. Mr. Commissioner, directing your attention to a letter that was sent from the Secretary of your Board of Commissioners to the National Capital Park & Planning Commission as of January 30, 1956, would you state whether or not this letter was sent at the direction of and with the understanding of the Board of Commissioners?

69 * * * THE WITNESS: It was my understanding that the Secretary of the Commission would send a letter to the Chairman of the National Capital Park & Planning Commission stating the action which had been taken by the Board of Commissioners with respect to the so-called urban renewal boundaries in the vicinity of George Washington University, and that this

letter was sent pursuant to those instructions. However, the letter was not, as I recall it, submitted to me before it went out. I do not remember actually going over the language of the letter.

* * * * *

70 Q. Mr. Commissioner, going back to that hearing, as of January 20, 1956, no notice was given of that hearing or meeting, as it was called, was there, within the meeting of notice for the District of Columbia? For instance, there was no publication in The Register or any other official notice given? A. No, there was no publication in any newspaper or in The Register of the District of Columbia.

71 That hearing was what we call an informal meeting of the interested parties at which the people that we understood were interested in this matter were simply called by telephone and told there would be a hearing or meeting at such and such a time, and we would be glad to have them come in and make any statement that they wanted to. We did not consider it a formal public hearing with the usual type of notice which goes out.

However, it was the kind of meeting or hearing which we frequently conduct on matters where we think we know the interested parties, and we simply ask them to come in and talk this thing over.

Q. There was no record other than the notes of the Secretary; there is no transcription of the proceedings of that hearing? A. No, there was not as far as I know.

* * * * *

76 Q. Mr. Commissioner, could you tell us what action has been taken by the Board of Commissioners to secure funds for survey and plans for urban renewal project areas, and from what sources? A. The only action we have taken is represented in our resolution of January 20th, as modified by the resolution which we passed on March 6. At that time we authorized the Redevelopment Land Agency to apply to the Administrator of the Housing and Home Finance Agency for funds to conduct surveys and studies with respect to this area. We have not made any direct application to the Housing and Home Finance Agency ourselves.

The normal channels of procedure are that that would be done by the Redevelopment Land Agency. However, we have authorized them to go ahead, and have consented to that procedure.

* * * * *

81 Q. Mr. Commissioner, do you recall at the hearing on January 20 when you were asked by Mr. David Hornstein who, if you recall, is a very slight gentleman, as to whether or not there would be an reconsideration of the fact of the boundaries of the Foggy Bottom urban renewal area, to which you replied that you had designated that as a project area, and the sole question would be now what plans would be adopted for that area? A. No, I do not remember making that statement in that form.

My recollection of that situation was this: we had adopted, in December -- I think the date was December 27 -- a boundary area called the Foggy Bottom area which included some land which was owned by Mr. Hornstein's client.

As I recall it, Mr. Hornstein at the hearing on January 20 got up and asked me about his client's property. I told him, as I remember it, that that property was in the Foggy Bottom area and was not in the area that we had before us on the 20th of January, which was the area around George Washington University; that the boundaries of the Foggy Bottom area had already been settled; that they were not before us, and we were not going to change them at that time.

82 However, when I made that statement I had in mind that the boundaries of the Foggy Bottom area had been set with respect to the idea of getting funds for a survey and study of that area. I certainly did not have in mind, in anything I said at that time, that those boundaries were finally fixed. So that it was clear that there would be no change with respect to them after the study had been made.

It certainly has been my understanding right straight along in this whole matter that after the survey and study had been completed at that time, a public hearing would be held at which the question of the boundaries of these areas along the plan of development, of renewal -- whatever that might be -- would be fully considered and would be subject to such

revisions as might be deemed desirable and in the public interest.

If there was anything that I said to Mr. Hornstein which is not in accordance with that general background of this whole situation, it certainly was the result of a misunderstanding because I have had that in mind right straight along.

Q. Mr. Commissioner, what amount of money is to be spent for the survey of this area? * * * A. * * * The only concern that we had
83 in this was whether we would approve these boundaries so that the Redevelopment Land Agency could then proceed and get the funds from the Housing and Home Finance Agency. I think, if you want to find that out, you can get it very quickly from the Redevelopment Land Agency. It is their affairs, and not ours.

* * * * *

84 Q. What objections do you have to the granting of a hearing on whether or not this area should be determined, project area, for urban renewal? * * * A. We certainly expect to have a hearing. In fact, the statute requires us to after these studies have been made. I don't have any objections to a hearing.

Q. I am speaking of a hearing before you determining that there should be a project area so as to determine the question of whether or not funds should be expended at all for this survey. A. I do not know that we have any serious objections to having a public hearing at that time. But we do not think the statute requires it, and, because we were so advised, we set the thing up in the informal manner in which I have described it to you.

* * * * *

89 Q. Mr. Commissioner, with respect again to the letter of February 17, 1956, which transmitted to the Board of Commissioners the resolution of the National Capital Planning Commission as of February 2, 1956, what, if any, action have you taken subsequent to that time to transmit, as the Redevelopment Act of 1945 provides, back to the National Capital Planning Commission your action or lack of action? A. First of all, on March 6 we adopted a resolution clarifying the previous resolution

of December 27 and the one of January 20. Then we wrote a letter to Mr. Bartholomew which was dated March 8, 1956, and which I believe has been made a part of this record. Has it not?

MR. KORMAN: That is right. It is Exhibit 1-F.

THE WITNESS: Those are the actions we have taken with respect to this matter.

* * * * *

94 BY MR. HANNAN:

Q. Was your board acting upon the interpretation that the Act of 1954 has so amended the Act of 1945 as to obviate the requirement or the need for a hearing before the project area boundaries are defined and denominated, and before funds can be obtained for survey and plans?

* * * * *

95 THE WITNESS: It is my understanding of the Act of 1945 that it does not require two hearings; that there is only one hearing required, which is after the study for the plan has been made. And there is actually a proposed plan submitted which is the subject matter of hearing, and that, at that time, the boundaries are the subject of the hearing as well as the plan itself.

I do not think that the Act of 1954 amends any requirement of two hearings in the Act of 1945. However, I do feel that the Act of 1954, by the addition of Section 304, I believe it is, does set forth a procedure with respect to which the Redevelopment Land Agency, after getting approval of the local governmental authority, can apply to the Housing and Home Finance Agency for funds for survey and study of any area.

* * * * *

103 [Filed April 9, 1956]

COPY Plaintiffs' Exhibit 1

January 30, 1956

Mr. Harland Bartholomew, Chairman
National Capital Planning Commission
Room 7013, Interior Building
Washington 25, D. C.

Dear Mr. Bartholomew:

Reference is made to the resolution of the National Capital Planning Commission meeting of September 15-16, 1955, "adopting boundaries of the George Washington urban renewal project area," and to a letter dated December 30, 1955 from the Acting Secretary, Board of Commissioners, addressed to the National Capital Planning Commission, pertinent to the approval of boundaries for the proposed Foggy Bottom renewal project area. On January 20, 1956, the Board of Commissioners held a special meeting to consider approval of the proposed George Washington University urban renewal project area and modification of the boundaries thereof.

You are advised that following this meeting, in executive session, the Board of Commissioners approved the George Washington University urban renewal project area, provided the project area boundaries were modified and adopted by the National Capital Planning Commission as follows:

Description of the Revised Boundaries of the George Washington University Urban Renewal Project Area

104 Beginning for the same at a point on the northeasterly line of Pennsylvania Avenue, said point of beginning being the intersection of the said northeasterly line of Pennsylvania Avenue with the center line of 24th Street; and running thence Southeasterly along the said northeasterly line of Pennsylvania Avenue to its intersection with the westerly line of Washington Circle (U.S. Reservation 26); thence along the said westerly, southerly and easterly lines of Washington Circle to a point where said Circle is intersected by the said northeasterly line of Pennsylvania Avenue; thence in a Southeasterly direction along said northeasterly line of Pennsylvania Avenue to its intersection with the east line of 19th Street; thence South along the

said east line of 19th Street to the southeasterly line of New York Avenue; thence Southwesterly along the said southeasterly line of New York Avenue to the southwesterly line of Virginia Avenue; thence Northwesterly along the said southwesterly line of Virginia Avenue to the south line of E Street; thence West along the said south line of E Street to the east line of 25th Street; thence South along the said east line of 25th Street to a point where the southeasterly extension of the southwesterly line of Water Street intersects the said east line of 25th Street; thence Northwesterly along the said southwesterly line of Water Street to the west line of 26th Street; thence South along the said west line of 26th Street to a point where the southeasterly extension of the northeasterly boundary of West Potomac Park (U.S. Reservation 332) intersects said west line of 26th Street; thence in a Northwesterly direction along the said northeasterly line of West Potomac Park to the easterly boundary of Rock Creek and Potomac Parkway (U.S. Reservation 360); thence along said easterly boundary of Rock Creek and Potomac Parkway to the intersection of said easterly boundary of Rock Creek and Potomac Parkway with the center line of F Street; thence East along the said center line of F Street to the center line of 25th Street; thence North along the said center line of 25th Street to the center line of G Street; thence East along said center line of G Street to the center line of 24th Street; thence North along the said center line of 24th Street to the said northeasterly line of Pennsylvania Avenue and the point of beginning.

105

It is requested that the modified boundaries for the George Washington University urban renewal project area, as described above, be presented for adoption by the National Capital Planning Commission at its meeting of February 2-3, 1956.

Sincerely yours,

Secretary
Board of Commissioners, D. C.

RULING OF COURT

Tuesday, April 10, 1956

Before Judge LETTS today on motions in GUDELSKY v. SPENCER
ET AL., Civil Action 700-56 --

* * * *

(Counsel having been heard:)

THE COURT: Gentlemen, I am impelled to two conclusions at least. One is that this litigation is prematurely brought; and furthermore I am equally convinced that the injury and damages which the plaintiffs fear are entirely speculative. I might also indicate that every public interest seems to deny the action.

We have a motion to dismiss and a motion for summary judgment. Since one of these motions must be granted, I am of the opinion that it is more appropriate to rule on the motion for summary judgment, in view of the fact that the record is replete with evidence which has been argued and considered.

Do you disagree with that, Mr. Korman?

MR. KORMAN. I can't say I disagree with it, Your Honor. It will put on me the onus of drawing some findings of fact and conclusions of law; but we are ready to sustain that burden.

THE COURT: We have heard so much about the exhibits which have been placed in the file that I feel better satisfied to rule on the motion for summary judgment. That motion will be granted.

Mr. Korman will prepare and present for settlement findings of fact, conclusions of law and an appropriate order.

(Reporter's Certificate)

108 [Filed April 25, 1956]

ORDER

This cause came on for hearing on plaintiffs' motion for preliminary injunction and defendants' motion to dismiss or, in the alternative, for summary judgment, and, upon consideration thereof, of the affidavits, exhibits and memoranda in support of said motions and in opposition thereto, and of the deposition, and, after oral argument by counsel for the respective parties, and pursuant to the Court's Findings of Fact and Conclusions of Law, it is by the Court this 25th day of April, 1956

ORDERED that plaintiffs' motion for preliminary injunction be, and the same is hereby, denied, and it is further

ORDERED that defendants' motion for summary judgment be, and the same is hereby granted and that judgment be entered for the defendants.

/s/ F. DICKINSON LETTS

Judge

Submitted by

/s/ Hampton Baumgartner, Jr.

J. Hampton Baumgartner, Jr.

(CERTIFICATE OF SERVICE)

109 [Filed April 25, 1956]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on to be heard upon the plaintiffs' motion for preliminary injunction and defendants' motion to dismiss or, in the alternative, for summary judgment, and upon consideration of the affidavits, exhibits, depositions and memoranda in support of and in opposition to said motions, and after oral argument, the Court this ____ day of April, 1956 makes the following findings of fact and conclusions of law.

Findings of Fact

1. Plaintiffs are owners in fee of certain lots located in square 32 in the District of Columbia.

2. On all critical dates defendants constituted the Board of Commissioners of the District of Columbia.

3. After a semi-public hearing held on January 20, 1956, defendants, by resolution of said date, designated boundaries for a certain portion of the City of Washington lying generally west of 19th Street, N.W. to the Potomac River and south of Pennsylvania Avenue to Virginia Avenue as an urban renewal survey area to be known as the George Washington Urban Renewal Area.

4. Plaintiffs' properties are included within said area.

110 5. The action of the defendants in their resolution of January 20, 1956 was taken both pursuant to Title I of the Housing Act of 1949 (63 Stat. 413), as amended principally by the Housing Act of 1954 (68 Stat. 590) and pursuant to the District of Columbia Redevelopment Act of 1945 (5-701 et seq. D.C. Code, 1951).

6. The purpose of the resolution of January 20, 1956 as more fully explained and clarified in the resolution adopted by the defendants on March 6, 1956, was to enable the Redevelopment Land Agency to obtain funds from the Housing and Home Finance Agency under the provisions of the Housing Act of 1949 as amended to make surveys and studies to determine whether and to what extent the area designated or any portion or portions thereof should be established as an Urban Renewal Project Area.

7. Although the defendant Commissioners had received information that conditions existed in the area requiring the establishment of a project, such information was not sufficient to enable them to make a final determination concerning the need therefor.

8. Plaintiffs' properties have since 1946 been located in the Federal Taking Area as established by the Public Buildings Act of 1926, as amended in 1938 and 1946.

9. The record does not establish an intention on the part of the defendants to designate the area described in the resolutions of January 20, 1956 and March 6, 1956 as an urban renewal area in order to aid George Washington University to acquire any portion of the area for its own use.

10. Notwithstanding any words used therein, defendants, by their resolutions of January 20, 1956 and March 6, 1956 did not designate the area delineated therein as an Urban Renewal Project Area and did not finally and firmly fix boundaries for such a project area.

111 11. Prior to the making of the surveys and studies, it cannot be determined whether plaintiffs' properties will be included in the area finally decided upon and whether, if so included, any plan which is proposed to operate in such area will affect plaintiffs' properties.

Conclusions of Law

1. Plaintiffs' action has been brought prematurely.

2. The action of the defendants as embodied in their resolutions designating a survey area as set forth in Findings No. 3 and 6 was not arbitrary, confiscatory, unjust, discriminatory or unlawful.

3. No public hearing was necessary or required before taking the action taken in the resolutions of January 20, 1956 and March 6, 1956.

4. The action of the defendants as set forth in Findings No. 3 and 6 in no way hampers the plaintiffs from making any lawful use of their properties which they desire.

5. Plaintiffs have not sustained any injury that is compensable at law. They have not suffered any irreparable injuries through the actions of the defendants as set forth in the Findings, passim. The injury and damages which plaintiffs fear is entirely speculative.

6. The actions of the defendants described in the Findings are impressed with a vital public interest. The defendant Commissioners have the right and the duty to determine whether the area described in their resolutions is a fit one for urban renewal.

7. Defendants' action in designating boundaries for a survey area was a discretionary act.

112 8. The District of Columbia Redevelopment Act of 1945 requires only one public hearing.

9. A public hearing is necessary only when an urban renewal plan to operate within definite boundaries is under consideration by the Commissioners.

10. A finding that slum and blight exists in the area was not necessary in order for the Commissioners to authorize the action contemplated in their resolutions of January 20 and March 6, 1956.

11. The action of the defendants as set forth in Findings No. 3 and 6 was not final but was simply a preliminary step in the procedure; not reviewable by a court and not subject to be enjoined.

12. The supposed threat to plaintiffs' rights is, at this stage, entirely speculative and remote.

13. Should an urban renewal plan evolve under which plaintiffs' properties are appropriated, plaintiffs will have an adequate remedy at law in condemnation proceedings.

14. The fact that real property may ultimately, under an urban renewal plan, be taken from one private owner and sold to another does not invalidate the law.

15. Plaintiffs have no standing to enjoin the defendants from obtaining Federal funds for a public purpose.

/s/ F. DICKINSON LETTS
JUDGE

113 [Filed April 25, 1956]

**OBJECTIONS TO FINDINGS OF FACT AND CONCLUSIONS
OF LAW**

Come now the plaintiffs in the above entitled case and for objection to findings of fact and conclusions of law, proposed by the defendants herein, stated as follows:

1. Plaintiffs have no objection to Paragraphs 1 and 2.
2. Plaintiffs object to the whole of Paragraph 3. Defendants refer therein to a "semi-public meeting held on January 20, 1956". Said meeting was not "public" in any sense of the word. As stated by defendant, Samuel Spencer, in a deposition taken in this cause on March 26, 1956, "that hearing was what we call an informal meeting of the interested

parties at which the people that we understand were interested in this matter were simply called by telephone and told there would be a hearing or meeting at such and such a time, and we would be glad to have them come in and make any statement that they wanted to". (P. 8) The nature of this meeting was again described at the hearing of this cause at which time Milton D. Korman, Esq., counsel for defendants, referred to the meeting as an "informal meeting".

Further, defendants state that at said meeting they designated boundaries for the area in question, "as an Urban Renewal Survey Area to be known as the George Washington University Urban Renewal Area." An examination of the minutes of said meeting reveals that, "the Commissioners held a special Board meeting today ... to consider the approval of the proposed George Washington University Renewal Area and modification of the boundaries thereof". Nowhere in the minutes of the said meeting can reference be found to a so-called "Urban Renewal Survey Area". Likewise, not until the "clarifying order" of March 6 do we find a reference to "surveys and studies". Defendants' findings of fact ap-
114 pend to an area a name which has a definite statutory meaning and which indicates that the area has reached a point in planning which the defendants themselves admit has not yet been reached. Defendants own "clarifying order" makes this point abundantly clear.

A letter from the Secretary to the Board of Commissioners to Mr. Harland Bartholomew, Chairman of the National Capital Planning Commission under date of January 30, 1956, transmitting modified boundaries to the N. C. P. C. for adoption, refers no less than six times to "The George Washington University Urban Renewal Project Area."

3. Plaintiffs have no objection to Paragraphs 4 and 5, but do not admit the truth of any statements contained therein.

4. The purpose of the resolution of January 20, 1956 was obviously not to enable the Redevelopment Land Agency to obtain funds from the House and Home Finance Agency to make surveys and studies. The purpose of the "resolution" of January 20, 1956 was, in the words of the Secretary to the Board of Commissioners, as contained in the minutes of said meeting,

"to consider approval of the proposed George Washington University Renewal Area and modification of the boundaries thereof." There can be found no reference in the minutes of said meeting to the obtaining of funds by the Redevelopment Land Agency from the House and Home Finance Agency to make studies, surveys, or for any other reason. Defendants' clarifying resolution of March 6 contains the first mention found anywhere of application for funds to conduct surveys and studies of the area in question and unequivocally rescinded the resolution of January 20, 1956 for this was the basis of the Court's decision in this matter.

5. Plaintiffs' do not object to Paragraph 7, but do not admit the truth of any statements contained therein.

6. Plaintiffs object to Paragraph 8. Defendants allege that plaintiffs' properties have been located in the Federal Taking Area since 1946. The Public Buildings Act of 1926, as amended, specifically sets forth as boundaries for the Federal Taking Area, "the area west of 19th Street, N.W., bounded by New York Avenue, N.W., E Street, N.W., and the Potomac River; also Squares 122, 104, 81, 58, 59, 44 and 33." Plaintiffs' property is located in Square 32 which is not included in the boundaries set forth above. Public Law 413 (60 Stat. 257) further amended the
 115 Public Buildings Act, 1926, as amended, by authorizing the Administrator of General Services to acquire additional land in and contiguous to the area in the District of Columbia defined in the Act of March 31, 1938 (58 Stat. 149) under a limit cost of \$2,000,000. Funds for this purpose are hereby made available from the unobligated balances of appropriations heretofore made for the construction of buildings outside the District of Columbia. By no possible construction of any of the above statutes can it be inferred that plaintiffs' property lies within the Federal Taking Area. Plaintiffs' property, being contiguous to the area defined above, it is conceivable that it may some day be acquired by the Administrator of General Services according to established procedure. It is by no means "in" the Federal Taking Area at the present time.

7. Plaintiffs do not object to defendants' Paragraph 9, but do not admit the truth of the statements contained therein.

8. Plaintiffs object to Paragraph 10. If defendants did not by their resolution of January 20, 1956 designate the area delineated therein as an urban renewal project area, and firmly fix boundaries for such a project area, then it is difficult, if not impossible, to determine exactly what said resolution did accomplish. The minutes of the meeting of January 20 state that after the hearing the "Commissioners went into executive session and after a general discussion of the points raised during the open hearing unanimously approved the area boundaries of the proposed George Washington University Urban Renewal Area, provided said area boundaries are adopted by the Planning Commission. . .". The minutes of said meeting described in great detail the area boundaries proposed and forwarded to the N.C.P.C. for adoption. The letter of transmittal of the area boundaries from the Commissioners to the N.C. P.C. referred to the area only as "The George Washington University Urban Renewal Project Area". This phrase, as plaintiffs have previously pointed out, occurs six times in the letter of transmittal.

9. Plaintiffs do not object to Paragraph 11, but do not admit the truth of any statements contained therein.

116 In view of plaintiffs' objections to the Findings of Fact as set forth above, and since upon a motion for summary judgment all matters well plead are admitted to be true, plaintiffs object to defendants' proposed Conclusions of Law.

/s/ H. Max Ammerman

/s/ William T. Hannan

For the Plaintiffs

(CERTIFICATE OF SERVICE)

117 [Filed May 18, 1956]

NOTICE OF APPEAL

Notice is hereby given this 18th day of May, 1956, that the plaintiffs hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 25th day of April, 1956, in favor of the defendants against said plaintiffs.

/s/ William T. Hannan

Attorney for Plaintiffs

Copy mailed to:

Milton D. Korman, Esq.

* * * *

BRIEF AND APPENDIX FOR APPELLEES

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 13,453

**ISADORE M. GUDELSKY,
HARRY GUDELSKY,
HOMER GUDELSKY, et al.,**

Appellants,

v.

**SAMUEL SPENCER,
ROBERT E. McLAUGHLIN,
BRIGADIER GENERAL THOMAS A. LANE,
Appellees.**

**APPEAL FROM JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

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MILTON D. KORMAN
Principal Assistant Corporation
Counsel, D. C.
HUBERT B. PAIR
Assistant Corporation Counsel, D. C.
J. HAMPTON BAUMGARTNER, JR.
Assistant Corporation Counsel, D. C.**

**Attorneys for Appellees,
District Building,
Washington 4, D. C.**

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED OCT 25 1956

Joseph W. Stewart
CLERK

APPELLEES' STATEMENT
OF QUESTIONS PRESENTED

1. In a suit by certain property owners to enjoin the appellees, Commissioners of the District of Columbia, from setting aside an area including their property as an area in which to conduct certain surveys and studies preliminary to the establishment of an urban renewal project, was not the lower court correct in finding as facts (a) that appellees held a semi-public hearing before adopting their resolution of January 20, 1956, (b) that appellees did not designate the area as an Urban Renewal Project Area and did not finally fix the boundaries of the area, and (c) that the court could not determine whether, upon the possible ultimate establishment of an urban renewal area, appellants' properties would be included therein, and, if so, whether any plan adopted would affect their properties?

2. Notwithstanding that appellants' motion for preliminary injunction came on for argument at the same time as appellees' motion for summary judgment, was not the trial court correct when, upon denial of appellants' motion for preliminary injunction, it, in accordance with Rule 52(a), F. R. C. P., made findings of fact and conclusions of law?

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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 13, 453

ISADORE M. GUDELSKY,
HARRY GUDELSKY,
HOMER GUDELSKY,
JEROME SCHEFFRES,
EUGENE SCHEFFRES,
LILLIAN SCHEFFRES TURNER,

Appellants

v.

SAMUEL SPENCER,
ROBERT E. McLAUGHLIN,
BRIGADIER GENERAL THOMAS A. LANE,

Appellees

APPEAL FROM JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

COUNTERSTATEMENT OF THE CASE

Some time prior to January 20, 1956, there had been submitted to appellees, the Commissioners of the District of Columbia by the National Capital Planning Commission (hereinafter referred to as NCPC) and the District of Columbia Redevelopment Land Agency (hereinafter referred to as RLA) certain information tending to indicate that certain neighborhoods in northwest Washington are in need of surveys and studies to determine whether they should be designated as urban renewal areas (R. 8, 9). On

December 27, 1955, the Commissioners met to consider this problem and authorized RLA to apply to the Federal Housing and Home Finance Agency (hereinafter referred to as HHFA) to conduct such surveys and studies in an area which lies generally south of Pennsylvania Avenue northwest and west of 24th Street (R. 8). This area is generally referred to as the Foggy Bottom area.

As a result of similar reports to them, the Commissioners, on January 20, 1956, held another meeting to consider taking similar action with regard to an adjoining area in which the properties owned by appellants is located. This area is generally south of Pennsylvania Avenue and between 24th Street on the west and 19th Street on the east (see Exhibit 2A attached to defendants' motion to dismiss, etc.) Since the George Washington University is located in the area, it has come to be known as, and for convenience will be referred to hereinafter as, the George Washington area. On that date the appellees likewise authorized the RLA to seek funds from HHFA for surveys and studies. Certain interested citizens were invited to a meeting with appellees prior to the taking of this action. Among those attending this meeting were William T. Hannon, Esq., and H.

Max Ammerman, Esq., at present counsel for appellants in this cause (R. 12).

These actions were not taken under the District of Columbia Redevelopment Act of 1945 (60 Stat. 790, Section 5-701, et seq. D. C. Code 1951), but, rather, as indicated in the resolutions, were specifically taken to permit RLA to obtain funds from HHFA under the Housing Act of 1949 (63 Stat. 413, 42 USC 1441 et seq.), as amended, particularly by the Housing Act of 1954 (68 Stat. 590).

The action of the Commissioners by these resolutions was intended only, and the actual effect thereof was only, to authorize RLA to file application with HHFA to obtain funds under Title 1 of the Housing Act, as amended, to make surveys and studies to determine whether within the general areas referred to there is an area of that or some other size that requires the planning for and establishment of an urban renewal project. The appellees simply directed RLA to make applications under the Housing Act to obtain funds which were not otherwise available to conduct surveys so that the Commissioners might determine whether or not some part of these areas should be designated for urban renewal projects.

Some confusion arose in the minds of realtors, property owners, and other interested citizens as to the object sought by the Commissioners. Consequently, on March 6, 1956, the Commissioners entered a clarifying resolution setting forth the objects they had sought to accomplish by their previous resolutions. This resolution stated in effect that the Commissioners had obtained information indicating a need for the establishment of urban renewal projects in those areas but that they were unable on the information available at that time to make a determination as to the necessity for said projects, and because they did not have funds available to make the necessary surveys and studies, they were authorizing the RLA to obtain money for that purpose under the Housing Act (R. 15, 16).

On February 16, 1956, the appellants filed this action in the United States District Court for the District of Columbia seeking to enjoin the defendants from designating a certain area wherein they own property as "an Urban Renewal Area or as a Project Area for Urban Renewal Area." (R. 1-4). Thereafter appellants filed a motion for a preliminary injunction claiming irreparable injury (R. 5) and appellees filed a motion to dismiss

or, in the alternative, for summary judgment, together with certain affidavits and exhibits (R. 6-24). Shortly thereafter appellants took the deposition of appellee Samuel Spencer, at that time President of the Board of Commissioners (R. 25-29). The motions for preliminary injunction and to dismiss etc. came on for hearing in the lower court on the same day before Judge Letts (R. 33). After extended argument the court made its ruling from the bench (R. 32), and subsequently, signed findings of fact, conclusions of law, and an order (R. 33-36).

STATUTES INVOLVED

The statutes involved are printed in the appendix.

SUMMARY OF ARGUMENT

This Court should not set aside the order and judgment of the lower court which granted summary judgment to appellees, the Commissioners of the District of Columbia, on an appeal which questions the validity of certain findings of fact. The rule established by the Federal Rules of Civil Procedure and supported by court decisions is that such findings of fact should not be set aside unless "clearly erroneous." Appellants have made no showing that these findings of fact are clearly erroneous, and therefore this Court must affirm the lower court.

The lower court did not commit error of law in finding as a

fact that the meeting held by the Commissioners on January 20 constituted a semi-public hearing. Admittedly, it was not a closed hearing or executive session. Neither has it ever been claimed that it was a public hearing held after due notice published in the daily press. All of the pleadings and exhibits indicate that it was a meeting to which all known interested parties were invited and at which both proponents and opponents of a proposed urban renewal were given full opportunity to state their views.

There is no requirement of law that at this point the Commissioners should hold a public hearing. They were not proceeding under the Redevelopment Act of 1945 but rather under the Housing Act of 1949 as amended particularly in 1954. Even under the Redevelopment Act, no public hearing was required at this stage because that Act only requires one hearing, namely, when a redevelopment site and use plan is approved for the acquisition and disposition of real property within the project area. What the Commissioners actually did was to authorize the Redevelopment Land Agency (RLA), to obtain from HHFA funds not otherwise available to conduct surveys and studies. Their intentions in this regard were clearly indicated by the various resolutions and were reiterated particularly in the resolution of March 6, 1956.

It was not reversible error for the trial court to make a finding of fact that the Commissioners, by their resolutions of January 20 and March 6, did not designate the area as an urban renewal project area and did not finally and firmly fix boundaries for such project area. The boundaries as sent to appellees by the National Capital Planning Commission (NCPC) were amended by appellees. When returned to the appellees by NCPC the boundaries were again changed. Hence, no one set of boundaries was ever adopted by NCPC and approved by the Commissioners in accordance with the requirements of the Redevelopment Act, if, as appellants contend, the appellees had been proceeding under that Act. However, as stated above, the actions of the appellees were taken in accordance with procedures set up in the Housing Act.

The lower court correctly found as a fact that it could not determine whether appellants' properties would be included in any area finally decided upon or whether, if so included, any plan adopted would affect their properties. The lawsuit of the appellants was prematurely brought, because at the stage when they filed their suit, the appellees had merely authorized the urban renewal agency in the District of Columbia to obtain funds to make

certain preliminary studies. At this juncture, no one could possibly know whether appellants' property would be included in an area decided upon, and if so, whether the plan would contemplate any action at all to be taken to change their premises. Such a determination could only be made after an area had been firmly demarcated and a redevelopment or urban renewal plan for that area set up. Until those two steps had transpired there was no taking of appellants' properties nor had they suffered any injury which is compensable at law.

The matter was before the trial court both on appellants' motion for preliminary injunction and appellees' motion to dismiss, or in the alternative, for summary judgment. In denying the motion for preliminary injunction the trial court correctly followed the requirements of the Federal Rules of Civil Procedure when it made findings of fact and conclusions of law.

ARGUMENT

I

The appellees held a semi-public hearing before adopting the resolution of January 20, 1956. No public hearing was required at that stage.

In its findings of fact the trial court made the following

finding:

"After a semi-public hearing held on January 20, 1956, defendants, by resolution of said date, designated boundaries for a certain portion of the City of Washington lying generally west of 19th Street, N. W. to the Potomac River and south of Pennsylvania Avenue to Virginia Avenue as an urban renewal survey area to be known as the George Washington Urban Renewal Area." (J. A. 34.)

Appellants challenge the finding that this was a "semi-public hearing" contending that it "cannot bear the vaguest resemblance to such" (Appellants' brief p. 10) and that it was so-called only in an effort to create an impression that it met the requirements of the District of Columbia Redevelopment Land Act of 1945 (5-701 et seq. D. C. Code 1951). The minutes of the meeting of January 20, 1956, (J. A. 9-14) state that "the Commissioners held a Special Board Meeting today." It then records a large group of people who were present and summarized the statements made by persons speaking in favor of the proposed area. There follows a summary of the opposition and the names of those persons who appeared opposing the project. Both William T. Hannan, Esq., and H. Max Ammerman, Esq., counsel for appellants, were present. Next, these minutes indicate "following the hearing the Commissioners went into Executive Session."

The fact that all parties speaking on behalf of and in opposition to the project were present and that after they had stated their

views the Commissioners held an executive session alone indicates that this was in the nature of a public hearing. And to characterize it as a semi-public hearing is not overstating the facts.

Prior to the argument on the motions, counsel for appellants took the deposition of Mr. Samuel Spencer, the President of the Board of Commissioners. In response to questions by Mr. Hannan, Mr. Spencer answered:

"That hearing was what we call an informal meeting of the interested parties at which the people that we understood were interested in this matter were simply called by telephone and told there would be a hearing or meeting at such and such a time, and we would be glad to have them come in and make any statement that they wanted to. We did not consider it a formal public hearing with the usual type of notice which goes out.

"However, it was the kind of meeting or hearing which we frequently conduct on matters where we think we know the interested parties, and we simply ask them to come in and talk this thing over. [J. A. 26.]

* * *

"It certainly has been my understanding right straight along in this whole matter that after the survey and study had been completed at that time, a public hearing would be held at which the question of the boundaries of these areas along the plan of development, of renewal--whatever that might be--would be fully considered and would be subject to such revisions as might be deemed desirable and in the public interest. [J. A. 27.]

* * *

"Q. What objections do you have to the granting of a hearing on whether or not this area should be determined, project area, for urban renewal? * * *

A. We certainly expect to have a hearing. In fact, the statute requires us to after these studies have been made. I don't have any objections to a hearing.

"Q. I am speaking of a hearing before you determining that there should be a project area so as to determine the question of whether or not funds should be expended at all for this survey. A. I do not know that we have any serious objections to having a public hearing at that time. But we do not think the statute requires it, and, because we were so advised, we set the thing up in the informal manner in which I have described it to you." (J. A. 28.)

Hence it can be seen that the appellants did actually hold a hearing of an informal or semi-public nature to which all interested parties were invited and urged to express their views. No attempt was made to exclude anyone or to limit his statement. It was correctly characterized by the trial court as having been a "semi-public meeting."

Although appellants contend that this finding constitutes reversible error, their true complaint is not really with this finding of fact. Their argument is that a public hearing was required before the Board of Commissioners approved the project area adopted by the NCPC. This they arrive at by a strained and

erroneous construction of two provisions of the Redevelopment Act of 1945 (60 Stat. 790; Sec. 5-701, et seq., D. C. Code 1951). One is contained in the procedural steps set forth in Section 5-705(b) and the other is the definition of a "project area" contained in Section 5-702(j). Appellees have two answers to this argument: firstly, they were not proceeding at this point under the Redevelopment Act but under an entirely different authority; and secondly, if the various sections of the Redevelopment Act are properly construed, they do not require the holding of two hearings.

As the clarifying resolution of March 6, 1956, indicates, the Commissioners were proceeding under Title I of the Housing Act of 1949 (63 Stat. 413, 42 U.S.C. 1441) particularly as amended by the Housing Act of 1954 (68 Stat. 590). The action of the Commissioners on January 20, 1956, was intended only, and the actual effect thereof was only, to authorize the RLA to file application with HHFA to obtain funds under Title I of the Housing Act, as amended, to make surveys and studies to determine whether there is an area within this part of Washington that requires an urban renewal project. The Commissioners indicated that they had some evidence that this area was in need of an urban renewal project but that they were unable, on the basis of available

information, to make a final decision as to the extent of the needs or the size of the area (J. A. 15). Since they did not have the money to make studies of this area, they authorized RLA to obtain available funds under the Housing Act to make the surveys and studies so that they, the Commissioners, might have proper information upon which to act (J. A. 16).

Section 102(d) of the Housing Act of 1949 reads as follows:

"(d) The Administrator may make advances of funds to local public agencies for surveys and plans in preparation of projects which may be assisted under this title, and the contracts for such advances of funds may be made upon the condition that such advances of funds shall be repaid, with interest at not less than the applicable going Federal rate, out of any moneys which become available to such agency for the undertaking of the project or projects involved."

This section was amended in the Housing Act of 1954 where, in Section 304, the following is found:

"* * * Section 102 of said Act, as amended, is hereby amended--* * *

* * *

"(5) By amending subsection (d) to read as follows:

'(d) The administrator may make advances of funds to local public agencies for surveys and plans for urban renewal projects which may be assisted under this title, including, but not limited to, (i) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements, (ii) plans for the enforcement

of State and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (iii) appraisals, title searches, and other preliminary work necessary to prepare for the acquisition of land in connection with the undertaking of such projects. The contract for any such advance of funds shall be made upon the condition that such advances of funds shall be repaid, with interest at not less than the applicable going Federal rate, out of any moneys which become available to the local public agency for the undertaking of the project involved. No contract for any such advances of funds for surveys and plans for urban renewal projects which may be assisted under this title shall be made unless the governing body of the locality involved has by resolution or ordinance approved the undertaking of such surveys and plans and the submission by the local public agency of an application for such advance of funds.''' (Emphasis supplied.)

The RLA was specifically given authority to obtain such funds by Section 316 of the Housing Act of 1954 wherein it states:

"Sec. 316. Section 20 of the District of Columbia Redevelopment Act of 1945, as amended, is hereby amended--

* * *

(2) By adding the following new subsections at the end of said section:

(i) In addition to its authority under any other provision of this Act, the Agency is hereby authorized to plan and undertake urban renewal projects (as such projects are defined in title I of the Housing Act of 1949, as amended), and in connection therewith the

Agency, the District Commissioners, the National Capital Planning Commission, and the other appropriate agencies operating within the District of Columbia shall have all of the rights and powers which they have with respect to a project or projects financed in accordance with the preceding subsections of this section: Provided, That for the purpose of this subsection the word 'redevelopment' wherever found in this Act (except in section 3(n)) shall mean 'urban renewal', and the references in section 6 to the acquisition, disposition, or assembly of real property for a project shall mean the undertaking of an urban renewal project."

In the conference report to accompany the bill finally adopted into law as the Housing Act of 1954, H. R. Report No. 2271, 83d Cong., July 17, 1954, in commenting on the provision requiring municipalities to adopt ordinances or resolutions authorizing their urban renewal agencies to obtain funds from the federal government for the purpose of making surveys to determine whether a specific area is a fit one for an urban renewal project, the report contains the following paragraph at page 78:

"The Senate amendment added to the House Bill a provision that no contract may be made for advances of funds to local public agencies for surveys and plans for urban renewal projects unless the governing body of the locality involved has approved (by resolution or ordinance) the undertaking of the surveys and plans and the submission by the local public agency of an application for the advance of funds, thus assuring that the approval of the local governing body of the locality concerned will be obtained before any financial assistance contracts are executed. A related provision in the House

bill required the governing body of the locality concerned to make the determination that an urban renewal area is blighted or deteriorated, and to designate such area as appropriate for an urban renewal project, before any contract could be made for advances of funds to the local public agency for surveys and plans in preparation of the project. The Senate amendment deleted this provision in the House bill (and substituted the provision described above) on the ground that, as a practical matter, the governing body of the locality would not have the necessary data to support such a determination until after the survey and planning stage, and on the further ground that any redevelopment plan in connection with a project must be approved by the governing body of the locality before any moneys could be disbursed under a loan and grant contract. The conference substitute follows the Senate provision. "

Notwithstanding the foregoing, should there still be some thought that any inconsistency exists between the public hearing requirements of the Housing Acts of 1949 and 1954, under which the appellees actually proceeded, and the Redevelopment Act of 1945, it should be noted that both Housing Acts contain provisions specifically amending the Redevelopment Act of 1945. Both Section 610 of the Housing Act of 1949 and Section 818 of the Housing Act of 1954 contain identical language as follows:

"Insofar as the provisions of any other law are inconsistent with the provisions of this Act, the provisions of this Act should be controlling. "

Secondly, contrary to appellants' contention, the Redevelop-

ment Act of 1945 does not require two public hearings--one when a general area is delineated only for survey and another when a redevelopment plan is to be approved for the area. Even if it were true that the appellees proceeded solely under the provisions of the Redevelopment Act, which the clear language of their resolutions indicate they did not, only one public hearing would be necessary. The controlling provision of the Act is contained in Section 5-705(b) reading as follows:

"(b) For the exercise of the powers granted to the Agency by sections 5-701 to 5-719 for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

"(1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners.

"(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Commissioners, of the redemption plan of the project area which shall contain a site and use plan for the redevelopment of the area, including the approximate locations and extents of the land uses proposed for and within the area, such as public buildings, streets, and other public works and utilities, housing, recreation, business, industry, schools, public and private open spaces, and other categories of public and private uses. Such plan shall also contain specifications of standards of population density and

building intensity. Any such plan may also specify, by means of specification of maximum rentals or other basis, the amount or character or class of any low-rent housing for which the area or part thereof is proposed to be redeveloped." (Emphasis supplied.)

The definition of "project area" contained in Section 5-702(j) is not inconsistent with the requirements of Section 5-705(b). A careful reading of Section 5-705(b) will disclose that a public hearing is required therein only "for the acquisition and disposition of real property for the redevelopment of a project area," and is not required when the various agencies delineate boundaries of the area but only when consideration is being given by the appellees to the adoption of a redevelopment "site and use plan" for that project area. The public hearing referred to in subsection (j) of Section 5-702 is the same hearing referred to in Section 5-705(b) (2), namely before approval of an area "as an appropriate unit of redevelopment planning for a redevelopment project" as distinguished from projects in other parts of the city.

Appellees have not arrived at the point where an urban renewal or redevelopment project area is to be established. They were simply at the preliminary stage where they were authorizing the urban renewal agency of the District, namely, RLA, to obtain

funds to make certain studies which might or might not demonstrate a need for a plan for urban renewal. This they had full authority to do under the Housing Acts. No public hearing was required at that point under any provision of the various Housing Acts. But assuming, arguendo, that appellees were proceeding under the Redevelopment Act of 1945, which they avowedly were not, there can be no question that they had not yet reached the point where a public hearing is required by the Act. Indeed, the Commissioners of the District, without the aid of any one of these several Acts, probably have an inherent right, as heads of the local government, to cause investigations, surveys, and studies to be made of any area of the municipality to inform themselves of the existence or non-existence of needs for any sort of civic improvement. In directing such investigations, surveys, or studies, they are under no obligation to first conduct a public hearing.

II

The Commissioners did not designate
the area as an Urban Renewal Project
Area and did not finally fix the boundaries
of the area.

Appellants complaint that the court erred in entering its find-

ing of fact No. 10 (J. A. 35).

The trial court found that the appellees by their resolutions of January 20 and March 6, 1956, did not designate the area in which appellants' property is located as an urban renewal project area and did not finally and firmly fix boundaries for such a project area. Appellants' argument is that it is inconceivable that the appellees did not mean exactly what their minutes recite, which, according to appellants, was "to proceed outside the statute in order to accomplish Step 1, the adoption of an urban renewal area and the fixing of the boundaries thereof" (Appellees' brief 11).

A careful examination of the resolutions involved will show that under no circumstances was this either intended or accomplished. The exact text of the minute entry of January 20, 1956, concerning this point reads as follows:

"Following the hearing the Commissioners went into Executive Session and after a general discussion of the points raised during the open hearing unanimously approved the area boundaries of the proposed George Washington University Urban Renewal Area, provided said area boundaries are adopted by the National Capital Planning Commission, as recommended in the report of Colonel Mathe dated January 17, 1956, referred to above, and shown on plat attached to said report. This plat was exhibited by Flickinger at the meeting." (J. A. 12.)

At page 11 of their brief appellees quote a portion of this minute entry but have omitted all reference to the language beginning at the point "provided said area boundaries * * *." Giving the argument of appellants all full weight and following it through to its logical conclusion, the most that can be said is that the Commissioners approved the area boundaries conditionally; that is, dependent upon their adoption by the NCPC. Now, however, the NCPC at its meeting on February 2 and 3, 1956, reconsidered the boundaries it had previously adopted and adopted new ones which differ both from the original ones it had adopted and the ones the appellees had forwarded to it and in forwarding its resolution including the new boundaries, the Chairman of the NCPC wrote as follows:

"Reference is made to your letter dated January 30, 1956, whereby the Board of Commissioners, presumably under Section 12 of the D. C. Redevelopment Act of 1945, referred back to the National Capital Planning Commission boundaries for the George Washington Urban Renewal Project Area with recommendations for modification thereof.

"In accordance with your request, the Commission at its meeting on February 2-3, 1956, reconsidered the boundaries previously adopted and, with minor typographical changes, accepted the proposal of the Commissioners for revision of the area boundaries. Hereto attached are three certified copies of a

resolution approved by the Commission adopting the modified boundaries. As provided by the Redevelopment Act, modified boundaries must subsequently be approved by the Commissioners. The matter is, accordingly, resubmitted to you for that purpose." (J. A. 18-19.)

Accordingly, the matter stood in the posture of an offer without an acceptance. The NCPC had forwarded one set of boundaries, the Commissioners had on January 20, 1956, slightly altered them, and the NCPC by resolution of February 2-3, 1956, adopted still another set of boundaries and forwarded them to the Commissioners for approval. At that point there had been no meeting of the minds, which appears to be necessary even under appellants' construction of the Redevelopment Act. Thereafter the appellees passed their clarifying resolution of March 6, 1956, and on March 8 the President of the Board of Commissioners returned the resolutions to NCPC stating:

"You will note that the Commissioners authorized the Redevelopment Land Agency to apply, under the provisions of the Housing Act of 1949, as amended, for funds to conduct surveys in the area described in the enclosed order. After such funds are made available and the surveys, which presumably will be made in cooperation with the Planning Commission, are completed, if the results substantiate the representations which heretofore were made to the Commissioners, the time will be ripe for the Planning Commission to

adopt Project Area Boundaries and submit them to the Board of Commissioners for approval in accordance with the requirements of the District of Columbia Redevelopment Land Act of 1945." (J. A. 23.)

This recitation of the facts clearly establishes that at no time was any set of boundaries completed, adopted by the NCPC, and approved by the District Commissioners to comply with appellants' interpretation of the Redevelopment Act of 1945. Hence, even if, as appellants contend, all the actions were taken under the Redevelopment Act, at no time were they ever procedurally completed. It must be borne in mind, however, that the language of all of the resolutions and records of actions by the appellees clearly indicate that they were proceeding under powers granted to them under both the Redevelopment Land Act of 1945 and the Housing Act of 1949, as amended.

It should be noted, also, that the action taken with regard to the George Washington area was a companion action to an earlier resolution of the Commissioners concerning the Foggy Bottom area (J. A. 8). At all stages except the initial meeting of the Board of Commissioners, these two areas, which are immediately contiguous, were handled together. Although the minute entry of January 20, 1956, on the

George Washington area does not state the purpose for which the action was being taken, the minute entry of December 27, 1955, on the Foggy Bottom area does state the purpose for which the action was being taken:

"The action of the Commissioners will permit the Redevelopment Land Agency to apply to the Housing and Home Finance Agency for funds to survey the area and to draft a plan for its development. (G. F. 5-704)" (J. A. 9.)

Even without consideration of the Resolution of March 6, 1956, it is reasonable to conclude that the Commissioners were handling the two areas, the latter of which had been carved from the former, in the same way. Hence the court was correct in finding that the defendants had not designated the area as an urban renewal project area and never finally and firmly fixed the boundaries for such an area.

III

The lower Court did not err in finding that it could not determine whether appellants' properties would be included in the area finally decided upon and whether, if so included, the plan adopted would affect their properties.

As discussed above, the action of the Commissioners did not establish a definite urban renewal project area and did not attempt

to finally and definitely fix the boundaries for such an area. All that they did, if their resolutions are read in the proper light, was to authorize RLA to get funds from HHFA to make certain studies and surveys so that sufficient information would be available to the Commissioners, the NCPC, and the RLA to aid them in deciding whether an urban renewal project area with any definite boundaries should be established in the neighborhood of appellants' property.

Until such information is available, no one could possibly know whether the square where appellants' properties are located will be included in a project area, and, if included, whether the plan adopted and approved will contemplate any change in the use presently being made thereof.

But, if it is supposed for the sake of argument, that at a later date it is indicated that an urban renewal project area encompassing appellants' properties should be established, the action taken by the Commissioners which is the basis of the complaint brought in the lower court was, thus far, merely preliminary. It did not deprive the appellants of their right to use and dispose of their property as they see fit. The rule is well established that

a person cannot enjoin the preliminary stage of an administrative procedure. As was said by this Court in the case of Utah Fuel Company v. National Bituminous Coal Commission, 69 App. D. C. 333, 101 F. 2d 426, aff'd 306 U. S. 56.

"* * * Except as hereinafter noted preliminary procedural orders of administrative agencies are not subject to judicial review. * * * even where Congress has expressly provided for review by means of writ of injunction--as in the case of the Interstate Commerce Commission--relief has been denied where the order sought to be enjoined was, as in the present case, a mere step in procedure; and even though in some cases no other review may be available."

In a similar instance the Supreme Court reversed the judgment of this Court which had affirmed the granting of an injunction to a bank which was fearful that the Federal Reserve Board might take action that would adversely affect it. In Eccles v. Peoples Bank, 333 U. S. 426, 434, 92 L. Ed. 784, 68 S. Ct. 641, Mr. Justice Frankfurter, speaking for the Court said:

"* * * But, as we have seen, the Bank's grievance here is too remote and insubstantial, too speculative in nature, to justify an injunction against the Board of Governors, and therefore equally inappropriate for a declaration of rights. This is especially true in view of the type of proof offered by the Bank. Its claims of injury were supported entirely by affidavits. Judgment on issues of public moment based on such evidence, not subject to probing by judge and opposing counsel, is

apt to be treacherous. Caution is appropriate against the subtle tendency to decide public issues free from the safeguards of critical scrutiny of the facts, through use of a declaratory summary judgment. Modern equity practice has tended away from a procedure based on affidavits and interrogatories, because of its proven insufficiencies. Equity Rule 46 forbade such practice save in exceptional cases. See *Los Angeles Brush Mfg. Corp. v. James*, 272 U.S. 701; cf. Federal Rules of Civil Procedure 43 (a). Again, not the least of the evils that led to the Norris-LaGuardia Act was the frequent practice of issuing labor injunctions upon the basis of affidavits rather than after oral proof presented in open court. See *Amidon, J., in Great Northern R. Co. v. Brosseau* 286 F. 414, 416; *Swan, J., in Aeolian Co. v. Fischer* 29 F2d 679, 681, 682.

"Where administrative intention is expressed but has not yet come to fruition, (*Ashwander v. Tennessee Valley Authority*, 297 US 288, 324, or where that intention is unknown (*Great Atlantic & Pacific Tea Co. v. Grosjean*, 301 US 412, 429-30), we have held that the controversy is not yet ripe for equitable intervention. Surely, when a body such as the Federal Reserve Board has not only not asserted a challenged power but has expressly disclaimed its intention to go beyond the legitimate 'public interest' confided to it, a court should stay its hand."

Likewise, in *National War Labor Board v. Montgomery Ward & Co.*, 79 U.S. App.D. C. 200, 203, 144 F.2d 528, cert den. 323 U.S. 774, this Court, in concluding that the alleged threat against plaintiff stated no cause of action because it was merely a fear that a threat might arise in the future, said:

"* * * Even if the complaint were interpreted as alleging that threats have been made, the allegation would come only to this, that the defendants have used unspecified and perhaps vague or tentative expressions which, in the plaintiff's opinion, indicate a sufficient inclination toward taking some step or other for the enforcement of the Board's order so that they may be characterized as threatening. The complaint therefore alleges no facts which indicate more than a possibility of any action by the defendants which might cause injury to the plaintiff. It follows that the complaint states no valid claim for review of the Board's order."

For another reason also the lower court was correct in holding that the alleged threats feared by appellants were speculative and the action premature. The Housing Act of 1954 contains several alternative types of renewal activities that may be undertaken by an urban renewal agency in renewing an area:

- (1) There may be actual redevelopment, under which existing buildings are razed and new buildings constructed in their place.
- (2) There may be simply building code enforcement which contemplates improvements to existing buildings to bring them up to compliance with local housing and building codes.
- (3) There may be rehabilitation or reconstruction

of existing buildings under which the original owners retain their property and rehabilitate it through loans to them guaranteed under various provisions of the Federal Housing Act.

(4) There may be areas where the only work necessary will be the installation or reconstruction of utilities, streets, park, playgrounds or the like. This could not be detrimental in any way to appellants' properties.

(5) Finally there is, of course, the alternative that when and if any renewal plan is arrived at, such plan will provide that appellants' existing buildings shall be permitted to remain exactly as they are without any work being performed on them.

A mixture of some or all of these provisions is permitted in the plan which may be adopted for the same project area. As of the present time, no one could possibly forecast which, if any, of these alternatives might be planned for appellants' properties, and hence the lower court was correct in making the finding that it did.

Furthermore, in the present posture of the matter, no one could know whether the survey authorized by the appellees will

develop information showing that it is advisable to establish a project area and to evolve a plan for its improvement. Consequently, no one could possibly know what that plan will contemplate for the land which the appellants have assembled. Appellants still have the right to develop their own plans for their properties and to improve them, or not, as they see fit.

In paragraph 3 of their complaint the appellants allege that they had acquired this property "with the express intention of building thereon a multi-million dollar structure, of a design and use in keeping with the beautiful buildings projected by other private owners such as Peoples Life Insurance Company and Potomac Plaza in the area." (J. A. 2.) At the time the matter was before the trial court, the record was devoid of any indication that appellants had come forward with their plans or design for such a structure, and in fact, even to the present they have not done so. The lower court could not possibly tell whether, if they had presented such plans, and if per chance, their property was included within the project area, the plans would or would not be approved by the planning and urban renewal authorities. Until such an urban renewal plan is actually adopted, and such construction plans are submitted and rejected, there surely can be neither harm nor the

threat of harm to the plaintiffs. However, if an urban renewal plan is finally adopted and if it provides for the most drastic type of action with regard to appellants' land, they cannot possibly contend now that the courts would not in condemnation proceedings grant them every cent that their property is now or might then be worth with any improvements they may place upon it.

For these reasons the lower court was at a loss to be able to decide whether appellants' properties would be included, if and when an urban renewal plan is approved and adopted, and the lower court likewise could not tell whether any such future plan would have any effect on the appellants.

The appellants' real complaint is that the action taken by the appellees, as embodied in their resolutions, amounted to a taking of their property without due process of law because, they contend the very announcement of a possibility of some renewal procedures for this neighborhood immediately depressed the value of their properties. In support of their motion for preliminary injunction (J. A. 5), the appellants filed identical affidavits of Robert W. Savage (R. 15-16) and Thornton W. Owen (R. 11-12), two real estate appraisers. Therein the appraisers state that in their opinion the announcement

of the urban renewal program depressed the value of properties in the area and rendered them virtually unsalable for their highest economic uses. At page 12 of appellants' brief they repeat this argument and conclude that they are therefore irreparably injured. The short answer to this is that what they fear has not yet actually happened. But even if what they state is correct, the loss is damnum absque injuria. Assuming, arguendo, that the appellees had taken action having the effect which appellants say it has, the resultant damage to appellants' land holdings is only consequential. No legal damage which is compensable at law has been inflicted. The general rule is that the plotting or planning in anticipation of a project, street, park, or other public improvement, or the announcement of such anticipated action is not the taking or damaging of the property involved for which money damages can be recovered at law.

In the case of Danforth v. United States, 308 U. S. 271, 284, 84 L. Ed. 240, 60 S. Ct. 231, certain property owners along the Mississippi River contended that the designation of their land for condemnation for use as a levee under the Flood Control Act of 1928 amounted to a taking of their property at the time the land was

so designated and before the time it was actually condemned for use.

The Supreme Court held that the mere planning was not a taking without due process and stated:

"* * * A reduction or increase in the value of property may occur by reason of legislation for or the beginning or completion of a project. Such changes in value are incidents of ownership. They cannot be considered as a 'taking' in the constitutional sense.

* * *

"This leaves for consideration the contention that there was a taking by the enactment of the legislation, when work began on the set-back levee or when the levee was completed. The mere enactment of legislation which authorized condemnation of property cannot be a taking. Such legislation may be repealed or modified, or appropriations may fail." (Emphasis supplied.)

In an earlier case arising in the District of Columbia where the appellants claimed an act of Congress unconstitutional which provided for the platting and condemnation of certain land for highways here, because, among other things, a recording of a map showing the proposed highways did not provide for compensation to them as the owners until further condemnation proceedings were taken, the Supreme Court, in Bauman v. Ross, 167 U. S. 548, 597, 42 L. Ed. 270, 17 S. Ct. 966, said:

"* * * The object of the recording of the map is to give notice to all persons of the system of highways proposed to be established by subsequent proceedings of condemnation. It does not restrict in any way the use or improvement of lands by their owners before the commencement of proceedings for condemnation of lands for such highways, nor does it limit the damages to be awarded in such proceedings. The recording of the map, therefore, did not of itself entitle the owners of lands to any compensation or damages. *Shoemaker v. United States*, 147 U.S. 282, 321; *Prosser v. Northern P. R. Co.*, 152 U.S. 59; *Re Pittsburg Dist.*, 2 Watts & S. 320; *Re Forbes Street*, 70 Pa. 125; *Re Furman Street*, 17 Wend. 649; *Forster v. Scott*, 136 N. Y. 577; *Steuart v. Baltimore*, 7 Md. 500, 516."

With regard to the affidavits of Messrs. Savage and Owen the appellants argue at page 12 of their brief "the affidavits of these gentlemen remain uncontradicted." From this it appears that they are contending that the appellees had no answer for these arguments. This is not so. Appellees were not called upon to contravert these affidavits. The correct rule is that on a motion to dismiss the trial court should not consider evidence put forth in an affidavit in support of a motion for preliminary injunction. *Polk Co. v. Glover*, 305 U.S. 5, 9, 83 L. Ed. 6, 59 S. Ct. 731. *Gibbs v. Buck*, 307 U.S. 66, 76, 83 L. Ed. 1111, 59 S. Ct. 725. For that reason the appellees did not see fit to answer these affidavits and the trial court correctly did not take them into con-

sideration in making its decision against appellants. Moreover, since the two affidavits related to consequential damage, which in law is not compensable, no answer thereto was necessary.

IV

The findings of fact of the trial court
were not clearly erroneous and therefore
that court must be affirmed.

It is provided in Rule 52(a) Federal Rules of Civil Procedure
"* * * findings of fact shall not be set aside unless clearly erroneous,
* * *." What is meant by this rule was best stated by the Supreme
Court in the leading case of United States v. United States Gypsum
Co., 333 U.S. 364, 395, 92 L.Ed. 746, 68 S.Ct. 525, when it
stated:

"* * * Since judicial review of findings of
trial courts does not have the statutory or constitu-
tional limitations on judicial review of findings by
administrative agencies or by a jury, this Court
may reverse findings of fact by a trial court where
'clearly erroneous.' The practice in equity prior
to the present Rules of Civil Procedure was that
the findings of the trial court, when dependent upon
oral testimony where the candor and credibility of
the witnesses would best be judged, had great weight
with the appellate court. The findings were never
conclusive, however. A finding is 'clearly erroneous'
when although there is evidence to support it, the
reviewing court on the entire evidence is left with
the definite and firm conviction that a mistake has

been committed. "

See also U. S. v. Yellow Cab, 338 U. S. 338, 94 L. Ed. 150, 70 S. Ct. 177.

United States v. Oregon State Medical Society, 343 U. S. 326, 96 L. Ed. 978, 72 S. Ct. 690.

Wynne, et al. v. Boone, et al., 88 U. S. App. D. C. 363, 191 F. 2d 220.

Remington Rand v. Societe Internationale, etc., 88 U. S. App. D. C. 256, 188 F. 2d 1011, cert den. 342 U. S. 832.

Summerbell v. Elgin Nat. Watch Co., 94 U. S. App. D. C. 220, 215 F. 2d 323.

There is little doubt, that, upon a review of the evidence, this Court will conclude that the appellants have failed to firmly convince it that the trial court committed a mistake. In such circumstances this Court must affirm the lower court.

The fact that no witnesses were heard by the trial court and hence the credibility of witnesses was not involved does not alter this conclusion, for, as Judge Prettyman stated in the case of Bishop v. United States, 96 U. S. App. D. C. 117, 223 F. 2d 582, remanded 350 U. S. 961:

"* * * The courts have recognized a difference between the scope of a reviewing court's examination in a review of findings in which the credibility of witnesses is involved, and the scope in a review of findings which rest entirely upon documentary material; but in neither case may an appellate court reverse unless it has a firm conviction of clear error in the findings. We are not to reverse a finding by a trial court,

even if upon documentary evidence, unless we conclude that the finding is clearly erroneous on the entire evidence."

It is apparent there was no genuine issue as to any material fact present at the time the lower court granted the motion for summary judgment. The following are the material facts stated in the complaint and the position of the appellees with regard to them at the time the motion for summary judgment was granted:

- (1) The appellants alleged that they own the land--
as to that there was no dispute.
- (2) The appellants alleged that appellees had held
a meeting and designated a project area for urban
renewal but had not abided by the terms of the law--
this called for an interpretation of the laws involved.
- (3) The appellants alleged that this action was
arbitrary, unjust, and discriminatory, and would
result in unnecessary loss to the appellants--
these were simply conclusions of law.

The appellees did not file an answer but filed a motion to dismiss or in the alternative for summary judgment. In doing so they naturally admitted only the facts well pleaded but were not required to

admit the questions of law nor the conclusions of law contained in the complaint. Attached to appellees motion were the affidavits of G. M. Thornett and Robert E. Mathe together with certain exhibits appended thereto (J. A. 6-24). Such general allegations of the complaint were not sufficient on a motion for summary judgment to raise an issue of fact as against the detailed statements sworn to in the affidavits in support of appellant's motion. Williams v. Kolb, 79 U. S. App. D. C. 253, 145 F. 2d 344.

Again, as this Court said in Fox v. Johnson & Wimsatt, Inc., 75 U. S. App. D. C. 211, 219, 127 F. 2d 729:

"Conflict concerning the ultimate and decisive conclusion to be drawn from undisputed facts does not prevent rendition of a summary judgment when that conclusion is one to be drawn by the court."

Upon conclusion of the arguments on the motions for preliminary injunction and summary judgment, the court below commented:

"THE COURT: Gentlemen, I am impelled to two conclusions at least. One is that this litigation is prematurely brought; and furthermore I am equally convinced that the injury and damages which the plaintiffs fear are entirely speculative. I might also indicate that every public interest seems to deny the action.

* * *

"THE COURT: We have heard so much about the exhibits which have been placed in the file that I feel better satisfied to rule on the motion for summary judgment. That motion will be granted." (J. A. 32)

At this point the court was convinced that there was no material issue of fact and, if there had been a trial, that the appellees would be entitled to a directed verdict. This being so, it was entirely correct to grant a motion for summary judgment, for, as Judge Holtzoff commented in Meyers v. District of Columbia, 17 F. R. D. 216, 220,

"* * * Obviously the Rule does not contemplate that it is sufficient to warrant a denial of the motion if the pleadings create a formal issue as to a material fact. Were the Rule to be so construed, it would be rendered nugatory. The purpose of the summary judgment rule is to explore by material dehors the pleadings the question whether actually a genuine issue exists as to any material fact. If the moving party makes a prima facie showing on the basis of the material adduced in support of the motion that no genuine issue is presented as to any material fact under applicable principles of substantive law, then the burden is on his adversary to establish by countervailing material that such an issue exists. In this instance, the plaintiffs introduced no such material. One of the corollaries of these principles is that if it appears from the documents presented in connection with the motion that the state of the evidence is such that the moving party would be entitled to a directed verdict at the trial, no material issue of fact exists and disposition of the case by summary judgment is appropriate."

V

The trial court did not err when in ruling on a motion for preliminary injunction, it made findings of fact and conclusions of law.

Appellants intimate at page 7 of their brief that it was error for the trial court to issue findings of fact and conclusions of law when it granted a summary judgment to the appellees. It is there stated that this action was taken before appellants had been heard on their motion for preliminary injunction. This is not a fact. As appellants own statement of the case (page 4) correctly states:

"On April 10, 1956, a hearing was held in the District court upon plaintiffs' motion for preliminary injunction and defendants' motion for summary judgment. * * *"

It is also refuted by the official order of the court reading:

"This cause came on for hearing on plaintiffs' motion for preliminary injunction and defendants' motion to dismiss, or in the alternative, for summary judgment, * * *" (J. A. 33)

In such a situation the trial court was correct in issuing findings of fact and conclusions of law as it is directed to do by Rule 52(a) Federal Rules of Civil Procedure where it states:

"* * *; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which con-

stitutes the grounds of its action."

The leading case commenting on this requirement is Mayo v. Lakeland Highlands Canning Co., 309 U.S. 310, 316, 84 L. Ed. 774, 60 S. Ct. 517, where the court neglected to abide by this rule and instead issued a general opinion from which both sides took comfort on appeal. In reversing this action the Supreme Court said:

"It is of the highest importance to a proper review of the action of a court in granting or refusing a preliminary injunction that there should be fair compliance with Rule 52(a) of the Rules of Civil Procedure."

See also Public Service Commission v. Wisconsin Telephone Co. 289 U.S. 67, 77 L. Ed. 1036, 53 S. Ct. 514.

Benson v. Schofield, No. 13127 decided June 29, 1956,
U. S. App. D. C. _____, F. 2d _____.

2 Barron & Holtzoff, Federal Practice and Procedure
821.

CONCLUSION

In the final analysis, the ultimate issue is this: was the trial court "clearly erroneous" in making the findings of fact, of which appellants complain. Appellees submit there has been a complete failure by appellants even to raise any doubt whether these findings were proper. The appellees never contended they held a public hearing; indeed a public hearing was not necessary at this stage. Appellees did not designate the area as an urban

renewal project area. They merely authorized certain studies to be undertaken. No one could tell at this incipient phase what, if any, effect some future plan might have on appellants' properties. Hence appellants were not threatened with irreparable injury. Lastly, the trial court correctly followed the Federal Rules of Civil Procedure when in denying a motion for preliminary injunction, it issued findings of fact and conclusions of law. For these reasons, appellees respectfully submit, the action of the trial court must be affirmed.

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APPENDIX

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STATUTES INVOLVED

Section 2 of the Act of August 2, 1946, 60 Stat. 790, Ch.

736 (Sec. 5-701, D. C. Code 1951) provides as follows:

"It is hereby declared to be a matter of legislative determination that owing to technological and sociological changes, obsolete lay-out, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare, and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in such District; and it is necessary to modernize the planning and development of such portions of such District. The Congress finds that the foregoing cannot be accomplished by the ordinary operations of private enterprise alone without public participation in the planning and in the financing of land assembly for such development; and that for the economic soundness of this redevelopment and the accomplishment of the necessary social and economic benefits, and by reason of the close relationships between the development

and uses of any part of an urban area with the development and uses of all other parts the sound replanning and redevelopment of an obsolescent or obsolescing portion of such District cannot be accomplished unless it be done in the light of comprehensive and coordinated planning of the whole of the territory of the District of Columbia and its environs; and that this comprehensive planning and replanning should proceed vigorously without delay; and to these ends it is necessary to enact the provisions hereinafter set forth; and that the acquisition and the assembly of real property and the leasing or sale thereof for redevelopment pursuant to a project area redevelopment plan, all as provided in sections 5-701 to 5-719, is hereby declared to be a public use."

Section 3 of the Act of August 2, 1946, 60 Stat. 791, Ch. 736

(Section 5-702, D. C. Code 1951) reads, in part, as follows:

"The following terms, whenever used or referred to in sections 5-701 to 5-719, shall, for the purposes of sections 5-701 to 5-719 and unless a different intent clearly appears from the context, be construed as follows:

* * *

"(j) 'Project area' is an area of such extent and location as may be adopted by the Planning Commission and approved by the District Commissioners after public hearing as an appropriate unit of redevelopment planning for a redevelopment project separate from the redevelopment projects for other parts of the District of Columbia. In the provisions of this Act relating to lease or sale by the Agency, for abbreviation 'project area' is used for the remainder of the project area after taking out those pieces of property which in accordance with section 7-706 (a) shall have been or are to be transferred for public uses."

Section 6 of the Act of August 2, 1946, 60 Stat. 794, Ch. 736

(Section 5-705, D. C. Code 1951) reads, in part, as follows:

"(b) For the exercise of the powers granted to the Agency by sections 5-701 to 5-719 for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

"(1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners.

"(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Commissioners, of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area, including the approximate locations and extents of the land uses proposed for and within the area, such as public buildings, streets, and other public works and utilities, housing, recreation, business, industry, schools, public and private open spaces, and other categories of public and private uses. Such plan shall also contain specifications of standards of population density and building intensity. Any such plan may also specify, by means of specification of maximum rentals or other basis, the amount or character or class of any low-rent housing for which the area or part thereof is proposed to be redeveloped."

Section 12 of the Act of August 2, 1946, 60 Stat. 798, Ch.

736 (Section 5-711, D. C. Code 1951) provides as follows:

"An approved project area redevelopment plan may be modified at any time or times: Provided, That any such modification as it may affect an area or part thereof which has been sold or leased shall not become effective without the consent in writing of the purchaser or lessee thereof: Provided further, That such modification may be effected only through adoption by the Planning Commission and subsequent submission to and approval by the District Commissioners, as hereinafter provided. Before approval, the District Commissioners shall hold a public hearing on the proposed modification, notice of the time and place of which shall be given by mail sent at least ten days prior to the hearing to the then owners of the real properties in the project area and of the real properties immediately adjoining or across the street from the project area. The District Commissioners may refer back to the Planning Commission any project area redevelopment plan, project area boundaries, or modification submitted to it, together with their recommendation for changes in such plan, boundaries, or modification, and, if such recommended changes be adopted by the Planning Commission and be in turn approved by the District Commissioners, the plan, boundaries, or modification as thus changed shall be and become the approved plan, boundaries, or modification."

Section 102 of the Housing Act of 1949, 63 Stat. 414,

42 U. S. C. 1452, reads, in part, as follows:

"(d) The Administrator may make advances of funds to local public agencies for surveys and plans in preparation of projects which may be assisted under this title, and the contracts for such advances of funds may be made upon the condition that such advances of funds shall be repaid, with interest at not less than the applicable going Federal rate, out of any moneys which become available to such agency for the undertaking of the project or projects involved."

Section 609 (a) and (b) of the Housing Act of 1949, 63 Stat. 441 (Sections 5-715, 718, and 719, D. C. Code 1951) reads as follows:

"SEC. 609. To make available to the District of Columbia, and to authorize the appropriate agencies operating therein to accept, the benefits provided by titles I and III of this Act, the District of Columbia Redevelopment Act of 1945 is hereby amended by renumbering sections 20, 21, and 22 thereof as sections 21, 22, and 23, respectively and by adding after section 19 a new section to read as follows:

'SEC. 20. (a) As an alternative method of financing its authorized operations and functions under the provisions of this Act (in addition to that provided in section 16 of this Act), the Agency is hereby authorized and empowered to accept financial assistance from the Housing and Home Finance Administrator (hereafter in this section referred to as the Administrator), in the form of advances of funds, loans, and capital grants pursuant to title I of the Housing Act of 1949, to assist the Agency in acquiring real property for redevelopment of project areas and carrying out any functions authorized under this Act for which advances of funds, loans, or capital grants may be made to a local public agency under title I of the Housing Act of 1949, and the Agency, subject to the approval of the District Commissioners and subject to such terms, covenants, and conditions as may be prescribed by the Administrator pursuant to title I of the Housing Act of 1949, may enter into such contracts and agreements as may be necessary, convenient, or desirable for such purposes.

' (b) Subject to the approval of the District Commissioners, the Agency is authorized to accept from the Administrator advances of funds for surveys and plans in preparation of a project or projects

authorized by this Act which may be assisted under title I of the Housing Act of 1949, and the Agency is authorized to transfer to the Planning Commission so much of the funds so advanced as the District Commissioners shall determine to be necessary for the Planning Commission to carry out its functions under this Act with respect to the project or projects to be assisted under title I of the Housing Act of 1949.

* * *

"(g) It is the purpose and intent of this section to authorize the District Commissioners and the appropriate agencies operating within the District of Columbia to do any and all things necessary to secure financial aid under title I of the Housing Act of 1949. The District of Columbia Redevelopment Land Agency is hereby declared to be a local public agency for all of the purposes of title I of the Housing Act of 1949. As such a local public agency for all of the purposes of title I of the Housing Act of 1949, the Agency is also authorized to borrow money from the Administrator or from private sources as contemplated by title I of the Housing Act of 1949, to issue its obligations evidencing such loans, and to pledge as security for the payment of such loans, and the interest thereon, the property, income, revenues, and other assets acquired in connection with the project or projects financed in accordance with this section with assistance under title I of the Housing Act of 1949, but such obligations or such pledge shall not constitute a debt or obligation of either the United States or of the District of Columbia."

Section 610 of the Housing Act of 1949, 63 Stat. 443

reads as follows:

"SEC. 610. Insofar as the provisions of any other law are inconsistent with the provisions of this Act, the provisions of this Act shall be controlling."

Section 304 of the Housing Act of 1954, 68 Stat. 624,
42 U. S. C. A. 1452(d), 1955 Cumulative Annual Pocket Part,
reads in part as follows:

"SEC. 304. Section 102 of said Act, as amended,
is hereby amended--

* * *

"(5) by amending subsection (d) to read as
follows:

'(d) The Administrator may make advances of funds to local public agencies for surveys and plans for urban renewal projects which may be assisted under this title, including, but not limited to, (i) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements, (ii) plans for the enforcement of State and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (iii) appraisals, title searches, and other preliminary work necessary to prepare for the acquisition of land in connection with the undertaking of such projects. The contract for any such advance of funds shall be made upon the condition that such advance of funds shall be repaid, with interest at not less than the applicable going Federal rate, out of any moneys which become available to the local public agency for the undertaking of the project involved. No contract for any such advances of funds for surveys and plans for urban renewal projects which may be assisted under this title shall be made unless the governing body of the locality involved has by resolution or ordinance approved the undertaking of such surveys and plans and the submission by the local public agency of an application for such advance of funds.'"

Section 316 of the Housing Act of 1954, 68 Stat. 630

(Section 5-718 D. C. Code 1951) reads, in part, as follows:

"SEC. 316. Section 20 of the District of Columbia Redevelopment Act of 1945, as amended, is hereby amended--

* * *

"(2) by adding the following new subsections at the end of said section:

'(i) In addition to its authority under any other provision of this Act, the Agency is hereby authorized to plan and undertake urban renewal projects (as such projects are defined in title I of the Housing Act of 1949, as amended), and in connection therewith the Agency, the District Commissioners, the National Capital Planning Commission, and the other appropriate agencies operating within the District of Columbia shall have all of the rights and powers which they have with respect to a project or projects financed in accordance with the preceding subsections of this section: Provided, That for the purpose of this subsection the word "redevelopment" wherever found in this Act (except in section 3 (n)) shall mean "urban renewal", and the references in section 6 to the acquisition, disposition, or assembly of real property for a project shall mean the undertaking of an urban renewal project.

'(j) The District Commissioners are hereby authorized to prepare a workable program as prescribed by section 101 (c) of the Housing Act of 1949, as amended, and are also authorized to request the necessary funds for the preparation of said workable program. The Commissioners may request the participation of the Agency in the preparation of said workable program and may include in their annual estimates of appropriations such funds as may be required by the Commissioners or the Agency, or both,

for this purpose. The District Commissioners are hereby authorized, with or without reimbursement, to cooperate with the Agency in carrying out urban renewal projects and to utilize for that purpose the facilities and personnel of the District of Columbia under agreement with the Agency.'"

Section 818 of the Housing Act of 1954, 68 Stat. 648, provides as follows:

"SEC. 818. Insofar as the provisions of any other law are inconsistent with the provisions of this Act, the provisions of this Act shall be controlling."

FEDERAL RULES INVOLVED

Rule 12(b) of the Federal Rules of Civil Procedure provides as follows:

"(b) HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any

defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."

Rule 52 (a) of the Federal Rules of Civil Procedure provide as follows:

"(a) EFFECT. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)."

